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ABSTRACT

Faculty unionization in private schools and colleges poses a problem for already harried independent school administrators. The selection of a union, the end product of a series of difficulties, is a reaction to a situation that might have been altered had school administrators understood how unions come into being. This guide is intended to help administrators understand what a union is and the factors that promote its development. Included is a discussion of ways in which administrators can lessen the appeal of a union to faculty members. One section identifies the positive and negative consequences of unions, and one of four appendices provides information in question/answer form for those schools now negotiating with faculty unions. One appendix outlines a sample personnel policy, another is a glossary of labor terms, and the last is an annotated bibliography. (Author)

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Understanding Faculty Unions and Collective Bargaining

A Guide for Independent School Administrators

Frank R. Kemerer

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Preface

This publication was commissioned by the Board of Directors of the National Association of Independent Schools for the guidance and information of school heads and trustees.

The author, Frank R. Kemerer, is well qualified to write this monograph. He had over 10 years of experience as teacher and administrator in independent schools prior to becoming a specialist in academic governance and collective bargaining. Dr. Kemerer received his doctorate in 1974 from Stanford University, with a major in educational administration and a minor in law through Stanford Law School. He is the senior author of *Unions on Campus: A National Study of the Consequences of Faculty Bargaining* (San Francisco: Jossey-Bass, 1975), and has written many articles on both secondary and higher education. He currently serves as assistant to the president of the State University of New York College of Arts and Science at Geneseo, where many of his administrative duties involve labor relations and where he also teaches courses in civil liberties and constitutional law. In preparing Appendix B, "Principles of Personnel Policy," Dr. Kemerer was joined by Dr. Ronald P. Satryb, assistant vice president of business affairs at SUNY-Geneseo, a person well informed and experienced in personnel matters.

Dr. Kemerer was asked to present the essential facts about collective bargaining—what it is, the causes that give rise to it, the various forms it may take—along with whatever information and advice he felt would be helpful to school administrators in dealing with unionization, should the occasion arise.

While we are confident that *Understanding Faculty Unions and Collective Bargaining* presents accurate and authoritative information, neither NAIS nor the author intends that it serve as a substitute for legal advice in the complex area of labor relations. Any school faced with the possibility or reality of collective bargaining should, as an essential first step, engage the services of a competent professional.

A number of people associated with independent schools have participated in the development of this monograph. While it is not possible to name them all, we wish to recognize here the substantial time and effort

that was given to reviewing the manuscript and suggesting improvements by A. D. Ayrault, Jr., Lakeside School (Wash.); Edward R. Kast, Germantown Academy (Pa.); James Henderson, Jr., Independent Schools Association of the Central States; and Francis V. Lloyd, Jr., Associated Educational Consultants, Inc.

Cary Potter
President, NAIS

1
Introduction

Until recently, few people realized that faculty unions in education would grow so rapidly. One can scarcely find a daily newspaper that does not highlight a faculty-union election, a breakdown in contract negotiations with a faculty union, or a faculty strike. Indeed, if the 1960's were the era of student protest, the 1970's might well be called the years of faculty unrest.

While unions have long served the industrial worker in the private sector, only lately have they come to the public sector and to education. Since Wisconsin passed the first public-sector collective-bargaining law in 1959, unionization has grown rapidly in the public sector as state after state has passed some form of enabling legislation for at least some of its public workers. Currently, there is a movement to have the National Labor Relations Act, which now covers the private sector, extended to all public employees as well. If this should happen, employees in states that lack collective-bargaining legislation will have the option of forming and joining unions. More significantly, both public and private employees will enjoy the panoply of bargaining rights that are inherent in the federal law.

As more and more employee groups organize, they have a spillover effect on nonunionized employees: fear of unions changes to curiosity, then often to endorsement. Thus unions today have become commonplace among such diverse employee groups as auto workers, football players, garment workers, actors, symphony musicians, and airline pilots.

In education, the growth of unions has been phenomenal. By the end of 1975, approximately 4,000 public school districts, or 25 per cent of the total, were conducting some form of collective bargaining with organized groups of teachers. Twenty states had laws requiring school boards to bargain with teachers, and nine others required teachers and school boards to "meet and confer." In higher education, 430 campuses, or 16 per cent of the total, were unionized. Because large systems, such as the State University of New York, which employ a large segment of all faculty members in America are more prone to unionize, the percentage of full-time teaching faculty members in higher education now represented by unions is even higher—over 20 per cent. In 1965, 10 years earlier, there were virtually no unionized colleges or universities in the country.

But this is only part of the story. A comprehensive 1975 survey of college and university faculty members shows that they are actually far more disposed to accept unions than the number of contracts now in force would indicate. Fully 72 per cent, or *seven out of every 10*, faculty members in higher education say that they would vote for an agent if an election were held at their institution today. Even a majority of teachers at high-status public and private colleges and universities endorse this position, a fact that leads the researchers, Everett Carll Ladd, Jr., and Seymour Martin Lipset, who have written several books on faculty unionization, to conclude that, more than any factor, this high level of support for unions at prestigious institutions "suggests that unionization is the wave of academe's future." In some states, faculty unionization among public educational institutions has already reached the saturation point. For example, in New York and New Jersey, states having strong bargaining laws, almost 95 per cent of state institutions are organized.

In the private sector of education, union growth has been much slower, but nevertheless apparent. In higher education, only about 12 per cent of all unionized campuses in early 1976 were private. But the pace is quickening, as faculty members at such prominent private institutions as Boston University vote for unionization. Many private campuses report union activity among faculty members to be growing markedly, particularly as nearby public institutions form unions. Among nonpublic secondary institutions that may be covered by state legislation or, for the larger schools, by the National Labor Relations Act, faculty unionization is scarce, but it *has* surfaced. About 15 per cent of all Catholic diocesan school systems found themselves having to negotiate salaries and working conditions with their faculties in 1973. Even though fewer than half a dozen independent schools are known to have unionized faculties, the trend is up. The appearance of a new periodical, *The Independent School Teacher*, in late 1975, is itself a sign that independent school professionals are beginning to communicate much more openly about problems unique to nonpublic schools. In short, if the pattern elsewhere is any indication, faculty unionization poses a growing problem for already harried independent school administrators.

The selection of a union, *the end product of a series of difficulties*, is a reaction to a situation that might have been altered had school administrators understood how unions come into being. In some ways, the most difficult time *precedes* the election of a bargaining agent; yet this same period offers school officials the greatest potential for minimizing the impact of a faculty union by taking affirmative action to forestall its growth.

Sections 2–4 of this monograph are intended to help school officials understand what a union is and the factors that promote its development. Included is a discussion of ways in which administrators can lessen the appeal of a union to faculty members. Section 5, which identifies some of the positive and negative consequences of unions, together with Appendix A, in question-and-answer format, provides useful information for those

who are now negotiating with a faculty union as well as for those who hope employees will feel that a union is unnecessary for assuring job security, governance rights, and economic benefits. Appendix B, which outlines a sample personnel policy, Appendix C, a glossary of labor terms, and Appendix D, an annotated bibliography, have been included for those wishing more detailed information about labor relations in general and faculty unionization in particular.

2
What Is a Union?

A union is an association of individuals, but it is an association quite different from a professional group such as the National Council of Teachers of Mathematics or an academic deliberative body such as a faculty committee or assembly. A union is a powerful interest group that speaks externally with a single voice. For an association to be a union, there are four conditions that must be fulfilled.

1. Members must agree that their interests and values differ from those of the employer. There must be an *assumption of conflict* over how the resources of the institution are to be dispersed and sometimes even over the goals the institution should pursue.

2. Members must agree that the association is to be their *exclusive representative* for purposes of bargaining with the employer. This principle of "exclusivity," inherent in most labor laws, has serious implications for such pre-existing employee groups as faculty departments, committees, councils, and senates.

3. The association's members must be willing to give each employee *fair representation* in his or her disputes with the employer, even if the employee is not a dues-paying member of the association. This principle, also inherent in most labor laws, underlies the striving of unions for well-defined "grievance systems" whereby conflicts over employer actions can be channeled and resolved.

4. The members of the association must wish to force the employer to recognize the association as the collective-bargaining agent for the employees, preferably within a *legal framework*.

The fourth condition, or characteristic, most clearly distinguishes a union from other employee associations such as the National Council of

Teachers of Mathematics, the American Historical Association, or the American Bar Association. In the absence of a labor law, an association that functions as a union is faced with large obstacles, chief of which is forcing the administration to recognize it as the exclusive representative of the employees. More than one employee organization has collapsed when the employer has simply refused to have anything to do with it because of the absence of a collective-bargaining statute. If recognition is granted under these circumstances, complex disputes involving the nature of the bargaining unit, the scope of bargaining, and related matters must be settled informally by the parties or in court. Neither employer-union politics nor judicial decision-making is a very good substitute for a well-written collective-bargaining law.

The National Labor Relations Act and the concept of full bargaining rights

The federal law is particularly important, not only because it applies to most nonpublic schools, but also because it has great influence over state practice. Industrial workers spent long years bitterly struggling to win the right to choose unions that could negotiate a binding contract with management. The first major piece of collective-bargaining legislation was the Railway Labor Act, in 1926. The National Labor Relations Act (NLRA), a far more encompassing law, followed in 1935. Both made the clear refusal of an employer to bargain with the employee representative an unfair labor practice subject to fine and imprisonment. (It should be noted that there continues to be no effective remedy for what is known as "surface bargaining" by an employer—continuous discussion that does not result in an agreement. An intransigent employer cannot be forced to grant a concession to the union.)

In 1970, the agency charged with administering the terms of the NLRA, the National Labor Relations Board (NLRB), overruled an earlier decision not to apply the law to private educational institutions. Using its statutory rule-making power, the NLRB subsequently decided that all nonpublic educational institutions that substantially affect interstate commerce should be covered by the terms of the federal labor law. The present NLRB criterion for determining "affecting commerce" is a gross annual operating level of $1-million or more. Included are revenues from such sources as tuition, bookstore operation, and sporting events. (William Whiteside, a prominent labor lawyer with experience in academic bargaining, told an audience at the 1976 NAIS Annual Conference that it is possible that revenues from fund-raising efforts may soon be included as well.) If a school meets this test, the federal law applies. It would thus appear that all but more localized independent school operations are covered by the NLRA. Of course, the NLRB may lower these standards in the future to cover even those now excluded. Evidence in some cases indicates that this

is quite possible. Alternatively, a school may be covered by a state labor law, though most state labor laws do not extend jurisdiction to nonprofit institutions. Because the law plays such a significant role in collective bargaining, every school head should become familiar with the labor statutes that apply to his or her institution.

So far, the NLRB has extended its jurisdiction for purposes of supervising a union election or investigating charges of unfair labor practices (usually alleged employer interference with the right of employees to assist or join unions under the NLRA) to at least six independent schools: The Bishop Whipple Schools, Faribault, Minn.; The Laboratory School of the University of Chicago, Ill.; Breck School and The Blake Schools, Minneapolis, Minn.; Tabor Academy, Marion, Mass.; and Friends Seminary, New York City. In 1972, the NLRB decided to withhold extending further jurisdiction to secondary institutions in the nonpublic sector. But three months later, the board reversed itself and has continued to apply the federal law to nonpublic elementary and secondary schools that meet the criteria given above.

The obligation to bargain on the employer's side and the right to organize on the employees' side underlie the NLRA's concept of full bargaining rights:

1. The right of employees to be represented by an exclusive agent.
2. Bilateral (management-labor) determination of wages, hours, and other terms and conditions of employment.
3. The right to a binding contract between the employer and the representative of his employees, a contract that does not depend on the employer's good graces but one that can be enforced in a court of law.
4. The right to strike or to negotiate binding arbitration of both grievance disputes (those arising under the contract) and contract term disputes (those arising from the negotiation of a new contract).

The purposes of faculty unions

Unions serve two different faculty groups—those who wish to preserve past gains, and those who seek greater benefits and power. In one sense, all unions are preservation-oriented in that they seek to maintain and expand employee benefits, not see them reduced. In a few colleges, primarily private liberal arts institutions, however, faculty members have witnessed rapid erosion of their past individual benefits and institutional rights and privileges. Severe conditions have forced administrators at these colleges to assert greater control at the expense of the faculty. For example,

the selection of the American Association of University Professors as the faculty's bargaining agent at St. John's University (N.Y.) in 1970 and at the University of Delaware in 1972 stemmed in part from economic concerns and in part from hostile administrative action against the faculty.

Independent secondary school faculties have seldom played a large role in school governance. As Donald Roberts notes, in *Changing Patterns of School Governance* (Boston: NAIS, 1974), "Teachers, it would seem, are less interested than students in assuming influence in the governance of their schools. Or if they are interested, they restrain themselves, for one tactful reason or another. Certainly there are very few schools where faculties are exerting, or even asking for, policy-making power of any important kind" (p. 31). However, if the independence and self-determination that some faculties in the independent sector now enjoy are taken away, "preservation" may become a very real issue.

Traditionally, most of the agitation for unions, as we shall see, comes primarily from those who wish greater economic benefits and an expanded role in school decision-making. They include teachers, coaches, librarians, counselors, and others composing the professional staffs of independent schools. Nonprofessional groups—secretaries, kitchen staff, and maintenance and grounds employees—are also likely to form unions for these reasons. (While we focus here primarily on the professional employee, school heads should realize that most of the principles outlined in the following pages apply to nonprofessionals as well. For more information about collective bargaining and the nonprofessional employee, see section B of Appendix A, "Questions and Answers.") Some of the activism of students in the late 1960's has apparently rubbed off on faculty and staff members. Thus, as Roberts goes on to note, "The voice that was granted to students in faculty-student senates . . . also made audible the demands of their teachers, who—as heads have sometimes suspected—may have more empathy with student bodies than with administrations" (p. 31).

In Catholic schools, evidence shows that unionized faculty members, particularly lay teachers, have wished higher salaries, greater fringe benefits, and a greater part in governance. A 1974 National Catholic Educational Association monograph, *Negotiations in Catholic Schools*, quite bluntly states, "Their needs as professionals to be involved in decision making concerning their working conditions were not receiving sufficient response from school boards, diocesan officials, or school administrators" (p. 12).

Rising expectations, coupled with the harsh economic conditions of our times, promote the future growth of unions as enfranchisement forces. But before we examine the causes of unions in detail, let us consider some general characteristics of a collective-bargaining system.

Characteristics of a collective-bargaining system

Through the National Labor Relations Act and similar state legislation, a

collective-bargaining system has been established in this country that has several distinct characteristics.

First, *the law enables employees to organize and bargain collectively with their employers.* Collective bargining does not confer these rights on the individual employee, but rather on the group. Individual employees in a unionized faculty cannot deal directly with the employer over wages, hours, and conditions of employment unless the collective agreement allows this option. (This departs radically from practice in most independent schools.) Thus, in many matters affecting employment, the individual teacher's relation to the school is no longer direct but must be handled through the intermediaries of the union.

Second, *for purposes of bargaining, the union is the exclusive representative of all employees in the bargaining unit.* There can be no competing agencies. Thus, committees or councils that previously represented some or all of the faculty in matters of wages, hours, and conditions of employment must either confine their activities to noneconomic matters or cease to function. As a by-product of exclusivity, the union has a legally enforceable duty to represent *all* employees in the bargaining unit fairly, even though some may have chosen not to belong to the union. This does not mean that the union always has to back a member's grievance, though all but the most powerful unions find it politically too costly to refuse to back an individual to the highest level of the grievance system.

Third, *union affairs are governed democratically.* A majority vote of dues-paying members decides who shall be union officers, what the union will bargain for, and whether the negotiated contract will be ratified. While the one-man, one-vote system is an efficient way to resolve disputes, it does not take into account important differences in employee status. Thus, the senior faculty member has no more clout in a union than the most junior member; in fact, senior faculty members are often likely to have no clout at all, since they are less likely to become union members or take an active part in union affairs. The implications for a school where these differences of status have long been taken into account are obvious.

Fourth, *the similarity of the collective-bargaining laws and decisions interpreting them force a uniformity of collective-bargaining practices on all types of institutions and all types of employees.* At the same time, the subjects bargained over vary from organization to organization because the needs of employees differ. Since the bargaining process is controlled by those who use it, the *outcomes* are likely to be quite localized.

Fifth, *collective-bargaining laws and rulings recognize the concept of management prerogative, or management rights, as well as employee bargaining rights.* Many educational managers try to include as many items as possible under the umbrella of management prerogative so as to limit union influence. However, since teachers usually claim a professional right to play a role in deciding such academic policy matters as class size, curriculum structure, course content, and teacher evaluation, unions may be forced by their

members to bargain over these issues. Where faculty members already play a large part in these areas, it is probably wisest for administrators to continue to support their participation, at the same time insisting that they be kept separate from the bargaining process. The tension between management prerogative and union control is great, and only by the most careful decision-making can administrators preserve past traditions of faculty involvement in academic and related policy formation without involving unions.

Finally, *a collective-bargaining system is also an instrument of governance.* In fact, in a school where there is much conflict, a collective-bargaining system may be the only means of restoring order. By the terms of the agreement, the diverse activities and clashing interests of groups of individuals are regulated. Conflicts arising over the interpretation of a particular contractual provision or a particular action of management are channeled and resolved through the grievance process. Thus, to some extent, a contract functions like a constitution or a set of by-laws.

The collective-bargaining system, then, has potential for both good and bad. Before we examine collective bargaining as a decision-making process and try to assess the positive and negative results it is apt to have on independent schools, let us investigate the *causes* behind the growth of unions and determine to what extent school administrators can exert some control over them.

3

The Causes of Faculty Unions and Their Implications for Administrators

The causes of the growth of faculty unions are a combination of external pressures, internal issues having to do with practices at a particular school, and individual or personal characteristics of the faculty.

In a survey undertaken in 1974 at Stanford University, a cross-section of presidents of higher educational institutions where there were no unions, together with all the presidents of institutions that did have faculty unions and all the faculty union chairmen at those institutions, was asked to indicate the relative influence of 10 factors on promoting the growth of faculty unions nationally. Interestingly, the replies of these disparate respondents were similar: economic factors, job security, and a desire for more influence in governance stood out as the leading causes.

Presidents of unionized institutions and their faculty union counterparts were also asked to rate the same 10 factors as they pertained to the arrival of a union on their campuses. The respondents were divided into four categories according to the type of institution they represented. Again, the pattern was similar, with economic factors heading the list.

External causes

The desire for higher wages and benefits is not surprising. Faced with the rising cost of living and spurred on by the example of powerful teacher unions in the public sector, many independent school teachers, particularly those in urban and wealthy suburban areas, are no longer so willing to sacrifice dollars for prestige. Nor are they as likely to settle for smaller classes, "personal" atmosphere, and relatively well-behaved students. In some cases, especially where teachers are the sole breadwinners of their families, they literally cannot afford to settle for less.

Another well-known problem external to the school is the vast surplus of teachers. Most people are beginning to realize that the glut of qualified educators at all levels will not go away; it will get worse. This external threat is a catalyst to faculty-room discussion about school personnel practices

and problems. Those institutions that lack a well-formulated personnel policy are particularly vulnerable. The oft-stated "Don't worry, independent schools look after their own" is greeted more and more with skepticism. Despite assertions to the contrary, many faculty members look for signs of a "revolving door" policy—the periodic recruitment and dismissal of younger, less expensive instructors.

Another factor behind teacher insecurity is the national decline in the number of school-age children. While some researchers forecast an upswing in the birth rate later in this century, their prediction is far from certain. According to *Projections of Educational Statistics to 1983–84*, published in 1974 by the National Center for Educational Statistics, enrollments in grades K-12 in the public sector will decline by 9 per cent—from 45-million in 1975 to 41-million in 1983. Since 1971, they have already declined nearly 3 per cent. Enrollments in grades K-8 in all regular nonpublic day schools will decrease by 100,000 students per year, from 3.6-million in 1973 to 3.0-million in 1979. The National Center for Educational Statistics predicts, over-all, that enrollments in grades K-12 in the nonpublic sector will shrink from 4.6-million in 1975 to 4.2-million in 1983, with further declines likely as elementary children move into the upper grades. And these figures do not take into account regional or local variations. For example, the New York State Department of Education forecasts a 31 per cent decline in the number of high school graduates from 1973 to 1990, with almost all of the decline occurring between 1980 and 1990.

These figures illustrate that, even if the portion of the nation's children attending nonpublic schools remains at its present level of 10 per cent, there will be an absolute decline in enrollments in the long run. Shrewd school heads, of course, have studied the demographic features of their communities and strive to keep their schools' recruiting efforts as effective as possible. They also attempt to keep their curricular programs current and competitive. Rising or even steady enrollment, with little lowering of entrance requirements, helps mitigate faculty insecurity—even fear—about the future.

Two other external factors are significant in the growth of unions. The presence of supportive government legislation like the National Labor Relations Act and the efforts of aggressive unions are important stimulants to faculty organization.

Unions are losing their uniqueness in education; they are becoming respectable. The cigar-smoking union boss is fast disappearing. Most faculty members encounter their first union representative at a professional teachers' association meeting. In New York and Philadelphia, strong labor cities, representatives of the American Federation of Teachers directly recruited Catholic school teachers into forming union locals. These union representatives were themselves teachers who understood, and could play on, the fears and desires of nonpublic school people. One independent school head has reported that organizers of both the American Federation

of Teachers and its chief rival, the National Education Association, are present at every state conference his faculty attends as well as at the annual meetings sponsored by the regional independent school association. Union organizers are white-collar professionals. They speak openly and with conviction, even though they are apt to confine themselves to a low-pressure question-and-answer style. And they *are* interested in recruiting in the nonpublic sector. Albert Shanker, president of the American Federation of Teachers, put it quite bluntly in an editorial in the December 1975–January 1976 issue of *The Independent School Teacher:* "Independent school teachers have lived too long in a world apart. They are beginning to sense that all is not as it should be behind the wrought-iron gates and heraldic trappings. The question they must ask now is whether they will waste their time in collective begging exercises or take the plunge into real collective bargaining. There really isn't any other choice" (p. 17).

For these reasons, it is unlikely that a school head could isolate the faculty from union advocates. Such a tactic would have about as much success as keeping children from ever seeing violence on television. There are more effective ways for administrators to counter the causes of faculty unionization, as we shall see later.

Institutional causes

The causes of teacher unionism that originate externally explain the *general* tendency to form unions, but they don't explain why *certain* institutions and *certain* individuals are prone to unionize. Thus, while the National Labor Relations Act is the most supportive bargaining law in existence, few of the private schools, colleges, and universities it covers have faculty unions.

Studies of higher education and of public school systems reveal that "high quality" institutions—high admissions standards, well funded, older and well established, small, relatively free of external control—are less likely to have unions. A tradition of strong faculty participation in governance is another factor that retards union growth. Of course, the fact that a faculty curriculum committee has substantial and continuing influence in a school's academic program does not guarantee that a union will never surface. A dramatic change in pay scales or the dismissal of faculty members may be enough to offset those elements that appear to contribute to the absence of a union.

Unions usually don't develop slowly, however; they more often appear overnight, like mushrooms. The catalyst for their rapid growth is almost always a serious internal problem. For example, of the handful of independent schools that have faculty unions, nearly all of them experienced rapid union growth after the administration acted precipitously and dramatically to remedy a serious problem. The sudden dismissal of faculty

members, the intrusion of a board member in faculty salary discussions, and a substantial increase in class size over the summer are three examples of such action. More often than not, the school head, often at the instigation of the board, was panicked into making such sudden decisions. These decisions may have been perfectly reasonable and necessary, but they came across to the faculty — the backbone of any educational institution — as illustrations of administrative arbitrariness. Such reasons as "clearing out the deadwood," "keeping the doors open," or "getting maximum mileage out of the instructional staff" just aren't very persuasive. (For a particularly illuminating, and quite common, series of events leading up to the election of a faculty union, see "Teachers at Minnesota's Breck School Unionize with AFT; Many Cite New Head as Cause—Want Grievance Procedure," in the December 1975–January 1976 issue of *The Independent School Teacher.*) A recent Stanford University Study clearly showed that *the more a faculty member trusts the administration, the less he or she desires a union.* Of those having low trust, 51 per cent of a random sample of faculty members wanted to unionize; among those having high trust, only 20 per cent urged collective bargaining at their institution.

Of course, just because a faculty group has little trust in a school head and his or her administration doesn't mean that a union will appear. The faculty may have no opportunity to unionize because the school is too small to be included under the National Labor Relations Act and there is no applicable state law. But even if a formal union isn't forthcoming, a large percentage of malcontents makes administration difficult and compromises the educational potential of the school. To the extent that a collective-bargaining agreement establishes mechanisms for channeling and resolving conflict, a unionized school might be preferable to one where pent-up emotions and long-standing grievances and resentments characterize administration-staff relations.

Individual causes

The decision to join a union is a personal one. Some people would not join a union even under the most distressing circumstances. Others are inclined to embrace a union as a matter of principle. A number of individual characteristics have been identified that correlate with the desire to join a union. (It is important to note that "correlation" is not the same as "cause.") So, just because a faculty is composed of teachers who have some or all of these characteristics, it doesn't mean that they are necessarily union-joiners. But, assuming that all other things are equal, these four traits seem to be associated with pro-union sentiment: (1) lower level of formal education, (2) training and teaching in humanities or social science, (3) low rank or status within the school, and (4) young — under forty — and male. When these characteristics are combined with little trust in the administration, a limited degree of faculty influence in decision-making,

and a triggering event such as administrative action that has all the earmarks of arbitrariness, the situation is ripe for a faculty union, be it de jure (under a labor law) or de facto (the existence of a powerful group of dissidents).

Is unionization inevitable?

It should be obvious by this point that unionization is not inevitable. While school heads and trustees have limited influence over such harsh external pressures as the decline in numbers of school-age children, they do retain substantial influence over institutional practices and procedures. What can administrators do to prevent the rise of a faculty union? While the following steps do not answer every question, they do cover those institutional situations that are most directly associated with faculty militancy.

First, it is essential for the school head to *see that channels of communication are open and uncluttered.* He or she should promote open discussion, even of painful subjects, in order to minimize rumor and gossip. Since most faculties are composed of well-educated professionals, only the most stubborn will cling to a previous position even when confronted with facts to the contrary.

Second, *the mystery of institutional decision-making should be removed.* Who decides what, and why? To the extent that the school head functions as a political strategist, he or she manages the conflict among groups that is natural to educational institutions. Managing such conflict involves preventing what might be termed "jurisdictional extension," that is, invasion by one constituency of another group's decision-making territory—as, for example, when alumni want to control the school's athletic policy, the board wishes to make curricular decisions, or the faculty wants to dictate the investment policies of the board. Since the school head is "in the middle," he or she has a unique opportunity to promote—even to insist on—a clarification of roles so that everyone understands how the school functions and what each person's role in that process is.

Third, the school head should *try to involve traditional faculty governance bodies in important decision-making.* In most schools, the faculty is given some say in determining teaching strategies and curriculum development. In a good many schools, the faculty may comment on faculty salaries, fringe benefits, and long-range planning. When financial exigency threatens a change in the economic-reward system or a dramatic reordering of the curriculum, the school head ought to invite the faculty or its representatives to present their views, but at the same time indicating that authority for making the final decision rests with the school head or the board of trustees. One school head noted that meetings between faculty representatives and board members over salary issues at his school were useful until the faculty representatives reported back to the full faculty. Inevitably, the views of the board were colored, and some members of the faculty turned

against the trustees. Such sudden setbacks are common and can easily be remedied. For example, both sides can agree on a common "memorandum of understanding" detailing the substance of the sessions, or one representative can appear at the full meeting of the other constituency to make distortions less likely to occur or be quickly countered, should they arise. In any event, those who are asked to participate in making a difficult decision—or are even informed in detail about the reasons for such a decision—are far less likely to rebel than those whose actions are ruled by misinformation or total lack of information. This is not to imply that faculty members should serve on all trustee and administrative committees or on the board itself. They are basically employees; their participation in other than advisory groups could present a clear conflict of interest. In fact, once unionization takes place, faculty members are not allowed to serve in this capacity when wages, hours, and other bargainable conditions of work are involved. When bargaining, they can sit on only one side of the table—the employee side.

Fourth, given the significance of job security as a cause of unionization, *institutional policies relating to hiring, evaluation, rehiring, dismissal, and/or tenure must be effectively developed and clearly announced.* Because of the obvious significance to the faculty of these kinds of decisions, their representatives ought to be a part of the group that develops such policies. No school head, much less a trustee, no matter how well educated, can command the nuances of the various disciplines that compose today's school curriculum. Only department heads have the expertise to develop, together with the administrative staff, the professionally related criteria that must be part of well-constructed personnel policy. What constitutes adequate grounds for disciplinary dismissal? On what basis is a faculty member's contract not renewable? Why is a certain faculty member not given tenure? (For a discussion of tenure in the independent school setting, see the sample personnel policy in Appendix B.) If retrenchment must take place, how will reductions in the faculty be made? A vague answer or no answer at all to these questions (which are sure to arise within most faculties these days) may be interpreted as arbitrary or ineffectual administrative judgment. As one commentator on unionization in Catholic schools has noted, "If unions have been slow to develop in Catholic schools, their future must certainly be assured in those schools, parishes, and dioceses where there are no well-formulated personnel practices or where such personnel practices are cavalierly violated and ignored" (*Negotiations in Catholic Schools*, Washington, D.C.: National Catholic Educational Association, 1974, p. 12). Because of the possible involvement of such external agencies as the National Labor Relations Board and civil-rights agencies, personnel policies can no longer safely be the prerogative of the administration and board. To ensure relatively peaceful operation in difficult times, a comprehensive personnel policy needs to be developed and maintained.

Fifth, school heads *should avoid overt expressions of anti-union bias* (before a bargaining election is scheduled, indeed before a union even seeks to represent the faculty; for suggested administrative actions *after* an election has been scheduled, see Appendix A). There is mounting evidence that speaking out against unions contributes to their growth. Instead of taking a negative stance, the administration would probably be wiser to convince the faculty, by its actions, that a union is not in the faculty's best interest. This does *not* mean adopting a policy of appeasement. Where malcontents are clearly out of line, they should be so notified and reprimanded. Whatever action is taken ought to be as principled as possible and in accord with clearly announced institutional practices and procedures.

If school administrators do all these things, how certain can they be that a union will not become the exclusive representative of their faculty? Unfortunately, there are no guarantees. Assuming that a substantial majority of the faculty is not yet committed to a union and that external forces and internal school pressures are not insurmountable, chances of success appear to be reasonable.[1] Several instances in colleges and universities and at least one undocumented case in an independent secondary school show that timely administrative action has forestalled a union takeover. Even though a union drive may have been blunted, the school head must not allow staff or board to be lulled into a false sense of security. The drive to form a union can quickly be revived even by minor repetition of the events that first triggered it. (Under the National Labor Relations Act, a defeated union cannot petition for another election for 12 months—the so-called "election bar" rule. It is naive, however, to expect a union to stop its organization drive after one defeat.) One school head has said that his faculty pro-union group could quickly swing into action if communication should again break down within the school, for they are "quite well organized, quite sophisticated, and they have the capability of being extraordinarily militant." One of the most effective yet little-realized forces for controlling unionization and for shaping the outcomes of the collective-bargaining process after a union has been chosen is *the conduct of the school administration.*

[1]One commentator notes that, where pro-union sentiment is strong, it rarely helps to stave off unionism by "buying out," that is, by improving conditions of employment in an effort to dampen faculty interest in bargaining. Such a policy is not only costly; it also "raises the floor" for union demands. Thus, where unionization is inevitable, administrators are probably better off preparing for an election and the first round of bargaining rather than trying to appease a faculty whose collective mind is already made up. For further comments on strategy, see Caesar J. Naples, "Management at the Bargaining Table," in *Faculty Collective Bargaining: A Chronicle of Higher Education Handbook* (Washington, D.C.: *The Chronicle of Higher Education*, 1976). Naples, a lawyer and assistant vice chancellor for employee relations at the State University of New York, participates in bargaining sessions with the faculty union.

4

Collective Bargaining as a Decision-Making Process

Frequently, one hears that "it isn't professional to be adversaries." The industrial model of labor relations, it is said, is not suited to education. A new model must be found that emphasizes the collegial relation between teachers and administrators. And so, like those who once endlessly searched for the fountain of youth, some people today keep trying to devise the "new model."

Unfortunately, many who deplore the adversary character of industrial labor relations really don't understand the nature of collective bargaining as a decision-making process. They ignore the fact that a "we-they" relation is an a priori condition for the appearance of a union, and that bargaining over a contract is, by definition, a process of give and take. It may help to think of the collective-bargaining process as having three distinct stages, each with unique characteristics: (1) the drive to elect a union, (2) negotiation of the contract, and (3) administration of the ratified contract.

The three stages of collective bargaining

The *unionization stage* involves competition among employee groups seeking to unionize and those seeking to preserve the status quo. Sometimes employees become disenchanted with their union and seek a "decertification" election to terminate it or replace it with another bargaining agent. In any case, this stage is highly political as groups struggle against one another for the prize of being the exclusive representative of the employees for purposes of bargaining (not necessarily for all purposes).

The *contract-negotiation stage* has a similarly political character, but at this point most of the conflict occurs between the bargaining agent and the employer's representatives at the bargaining table, with demands, threats, offers, counteroffers, and perhaps even a strike and lockout. In short, this is a power struggle between two groups having essentially differing views about wages, hours, and other terms and conditions of employment. Regardless of the type of employee group or the nature of the institution, this stage of collective bargaining almost always has four

basic characteristics: (1) It is bilateral — between employer and employees; (2) it is essentially a power play between these two interest groups; (3) the parties initially take polar positions on bargaining issues; and (4) it is adversary — "we-they" — in tone.

The *contract-administration stage* is, by contrast, a peaceful, bureaucratic process, even though the operation of the grievance system reveals the presence of underlying conflict. However, the very fact that this system does operate gives assurance that most conflicts will be resolved, either by the parties themselves or by neutral third parties, while the school or business functions normally. Contract administration *rationalizes* organizational governance: it defines the role the parties are to play in the organization, it makes predictable and hence legitimizes the actions of employers and employees, and it provides a means of channeling and resolving conflict. It also highlights weaknesses in the contract. Since some matters may not be clearly spelled out, and others may not be mentioned at all, the parties come to the next round of negotiations with plans to make the contract more specific. This tendency toward *specificity* is one very strong argument *against* incorporating a faculty-evaluation policy in the contract, for, given the abstract nature of the teaching-learning-counseling process, no evaluation scheme is likely to measure up to the demand for specificity. What reasons for nonrenewal of a teacher's contract would meet the test of specificity and be convincing to an outsider? The list is short.

As a result of their experience with contract administration, the parties may also seek to expand the next contract to cover unforeseen events ("contingency planning") or to curtail its coverage of certain matters. A good example of the latter situation occurred at the City Colleges of Chicago, a system of seven urban community colleges. The central administration discovered, to its horror, that it had agreed in the first contract to seek the union's consent before making *any* change in past practice pertaining to conditions of employment at *any* of the institutions within the system. Later, the contract was renegotiated to read any "uniform, systemwide" policy change, thus allowing each local administrator to make day-to-day policy changes needed to operate his particular campus.

Other forces that cause contracts to expand over time include weak or inexperienced bargainers representing management, legal decisions about the scope of bargaining, ineffectual traditional bodies or procedures to serve the needs of employees, external factors such as inflation and unemployment, and, most important, aggressive unions. It must be remembered that *a union as an employee interest group is a political entity*. Its members expect the union to convey benefits in return for the dues they pay. Its leaders, elected democratically, wish to retain their positions and will continually assert the power and achievements of the union and highlight the shortcomings of management. Like any organized interest

group, a union simply cannot afford to rest on its laurels and allow its visibility to decline during a multi-year contract. Also, if weak and/or new unions are to grow, they must be aggressive in backing grievances and expanding contractual benefits. For these reasons, the collective-bargaining process is often accurately portrayed as a never-ending quest for "more."

To the extent that the causes that bring unions about are similar, there may be some truth to the assertion that all unions work for the same goals and thus achieve similar results. But let us not forget that unions serve many diverse groups, including professional employees, in widely differing institutional settings. Each of these groups has a special set of needs. Depending on how unions serve them, the results of the bargaining process will differ from group to group. Thus, both external conditions and the internal characteristics of the institution and its employees have a great impact on what results the collective-bargaining process produces. Other factors that shape the outcomes of the bargaining process once a union election is scheduled are discussed in greater detail below.

Critical factors that shape the bargaining process

Once a law permits collective bargaining and a large number of faculty members express interest in an election, several important questions need to be considered before likely consequences of bargaining at a particular institution can be assessed. Since these questions are largely sequential, the answer to one question can affect the next.

1. The first question involves the *geographic extent and composition of the bargaining unit*. Since independent schools are usually single-campus institutions, geographic extent presents no problem. For nonpublic schools that are part of a system, the matter is more complex. For example, within a Catholic diocese, will the bargaining unit be limited to some schools or include all? Generally, labor boards that must decide this question prefer the largest reasonable unit so that the employer cannot be "whipsawed" by many different unions. In deciding the *composition* of the unit, the question for independent schools centers on whether nonteaching personnel (such as librarians and counselors) and department chairmen and deans ought to be included with the teaching faculty. The resolution of this issue is important. It is harder for the union that has a widely diversified membership to satisfy the needs of every element. In the industrial sector, it is sometimes harder to negotiate with one's own side than with the opposition. Diverse membership forces union leaders to spend inordinate amounts of time negotiating *internally* to keep the membership stable. When unions are first formed, this is likely to be an acute problem, even with a homogeneous membership, for employees

expect results from bargaining that no union leadership can provide. As one former union official at Breck School (Minn.) said, "It's a brand new experience on both sides. Many of the union members, frankly, have an unrealistic view of many of these contract items. It's going to take a long time to decide what's significant and what isn't" (*The Independent School Teacher*, December 1975–January 1976, p. 15). So, unless union leaders can educate and control the membership, shrewd administrative bargainers intent on preventing the union from running away with the school may panic a fledgling union into making decisions that are detrimental to its members.

Deciding the composition of the union can create problems for the administration as well. For example, department chairmen often perform many administrative duties, but they are often included in the union. This was the initial decision by the state labor board at Breck; later, after the administration petitioned the National Labor Relations Board to assert jurisdiction, the regional director of the NLRB declared that department chairmen, together with several other nonteaching employees, were ineligible for union membership because they were on the administrative staff. Generally, the NLRB has determined that chairmen are not supervisors and should be included in the bargaining unit unless the administration can prove otherwise. If such employees are considered part of the teaching faculty, they will most likely cease to be effective spokesmen for management. This has serious implications, for often department chairmen as first-line supervisors have important influence on the attitude and performance of the classroom teacher. Their inclusion in the bargaining unit may well force a school head to add a new layer of administrative staff or to ask those administrators not in the bargaining unit to assume greater administrative burdens.

Once the union has met the prescribed "showing of interest" requirement (30 per cent of the employees, under federal rules) to warrant scheduling an election, both sides may discuss the nature of the bargaining unit before the labor board. It is important for the administration to concern itself with this issue, since its long-term consequences can be great. And once the nature of the unit has been decided, chances of its being changed are remote.

2. Once the bargaining-unit question is resolved, the next issue involves the *identity of the bargaining agent*. A nonaffiliated faculty association must be totally independent of the institution to qualify as a bargaining agent. In some ways, an independent group is preferable to one that is affiliated with the American Federation of Teachers, the National Education Association, or outside unions that normally represent industrial employees but are looking at organizational opportunities in education, since the national union is strongly inclined to control the bargaining process. Quite simply, a school-based union is more familiar with the nuances of the independent

school and is probably easier to deal with than one that has the prepared handouts and rhetoric to match a national teachers' union. Presumably, many independent school faculties will come to a similar conclusion. As one pro-union faculty member in an independent school experiencing labor difficulties observes, "Our organization is viewed as a 'homegrown' group to meet 'homegrown' needs. The faculty in general would be very uncomfortable joining up with state or national associations."

Whether the identity of the bargaining agent really makes any difference, in the long run, to the outcomes of the bargaining process is another matter. Evidence from comprehensive contract analysis in higher education indicates little difference in contracts negotiated by different agents.

3. *How do union-security agreements affect bargaining?* It is important to understand what union-security agreements are because they have great influence on the union's strength and its ability to act responsibly. Union-security agreements are means by which unions can eliminate "free riders" — those who enjoy the collective benefits without paying for them. There are several forms of agreement.

a. *A closed shop* requires that the employee join the union as a condition of employment and that he remain a member after being hired. The closed shop is now generally illegal.

b. *A union shop* requires that the employee join the union within a specified time after being hired. Over 60 per cent of industrial contracts contain union-shop provisions.

c. *Maintenance of membership* requires that, once the employee joins a union, he must remain a member as a condition of employment. There is no requirement for him to join the union, though maintenance-of-membership stipulations often coexist with the union shop.

d. *An agency shop* requires that the employee, whether he belongs to the union or not, pay fees to the union equal to the union initiation fee, periodic dues, and general assessments.

While permitted as negotiable items by the National Labor Relations Act, union-security provisions are not allowed by most states, but pressure is growing to permit them. Most states do, however, allow a quite common form of union security called the "dues checkoff," which is the deduction of union dues from the employee's wages. Benefits of the dues checkoff are twofold: the union doesn't have to play the role of bill collector, and the employer knows the union's strength. While union-security agreements require that employees pay their fair share of collective-bargaining costs (at the State University of New York, annual dues in 1974 were 1 per cent of

gross salary, up to a maximum of $200) and also help take the union leaders' eyes off the membership rolls and the bank balance, they also build up the union's strength at the expense of some dues-payers who would prefer not to contribute as a matter of principle. Most disturbingly, a union-shop-like requirement means that all employees in the unit must either join or support the union, or be fired. Since this requirement also applies to those who are tenured, it is a potent argument for an administration that wishes to campaign against faculty unionization. There are many other arguments for and against the union-security agreement that cannot be covered here. A school head ought to explore this matter carefully with legal counsel before it surfaces in negotiations with a union.

4. *What is the scope of bargaining?* Like union-security agreements, the scope-of-bargaining issue has two sides, but it has far greater consequences for the outcomes of bargaining. Most administrators prefer to keep the scope narrowly confined to economic issues, while union officials prefer a wide scope of bargaining that enables them to satisfy the varying needs of their members.

Until recently, the National Labor Relations Act was the only statute governing the scope of bargaining, stating that "bargaining shall be over wages, hours, and other terms and conditions of employment." From this one sentence, the National Labor Relations Board has determined over the years that there are two kinds of bargainable issues. The first is *mandatory subjects of bargaining*, covered by the phrase "wages, hours, and other terms and conditions of employment." Such subjects are primarily economic and *must* be negotiated if *one* party so desires. The second issue is *permissive subjects of bargaining* — subjects not covered by that phrase but not illegal. Here, the parties *may* bargain over these issues *only* if *both* sides wish to do so. Internal union affairs, the selection of administrators, and the goals of the organization are in this category. It is illegal to use economic weapons to compel the other side to bargain over these matters. The NLRB has determined (generally not through education cases,[1] although there is no reason

[1] In recent bargaining talks, the faculty union at St. John's University (N.Y.) sought to include in the contract a number of items related to campus governance, faculty participation in the election of deans, faculty representation on the board of trustees, and a statement of criteria for selection of administrators. In a decision dated February 20, 1975, the regional director of the NLRB ruled that these proposals were not mandatory subjects of bargaining because they concerned "managerial rights and prerogatives and not terms and conditions of employment." He said that these demands were apparently designed "to give unit employees some control over the selection of high management officials to insure appointments agreeable to unit employees" (*The College Law Digest*, July 1975, p. 86). Even though this was a ruling of a regional director, and not of the full NLRB itself, the rationale was endorsed by the general counsel of the NLRB in his *Quarterly Report* (June 20, 1975). The general counsel added that "membership by a bargaining unit employee on the Board of Trustees would create a conflict of interest between his status as a trustee and an employee."

to believe that it will apply different standards to schools) that the following issues are to be included on the list of mandatory topics.

- Grievance procedures
- Hours and work-hour schedules
- Contracting work with outside agencies
- Pension and retirement terms
- Insurance (life, medical, dental, etc.)
- Reimbursement of tuition for continuing education
- Sick leave
- Holidays
- Employer business procedures (payroll, etc.)
- Procedures for discipline, removal, resignation of employees
- Agency shop (service fee)
- Dues checkoff
- Maintenance of membership
- Impact of retrenchment
- Wages, salaries, merit pay, etc.
- Assignment to and wages for extracurricular activities
- Management-rights clause
- Safety rules

A recent study of 14 states where decisions about the scope of bargaining have been reached shows some areas of agreement on what is a mandatory topic of negotiation and what is not, although a good deal of diversity of view remains. Generally, the decisions show the following trend.

Mandatory	*Permissive*
Wages and hours	Institutional missions and program
Grievance procedures	Level of program funding
Probationary periods of employment	Hiring of employees
Promotion procedures	Discharge of employees
Methods of teacher evaluation	Supervision of employees
Methods of teacher removal	Job assignment
	Conditions of employment for nonunit members
	Size of work force
	Standards of service
	Standards of recruitment

The greatest disagreement centers on items related to class size, preparation time for teachers, selection of textbooks, and the school calendar. The *impact on conditions of work* of many decisions by management, including retrenchment, is gaining ground as a mandatory topic of bargaining in both federal and state rulings. This has special significance. For example, while an administration may not have to bargain over the right to curtail a

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He noted the same conflict of interest arising from employee participation in the selection and evaluation of administrators. See *The College Law Digest*, September 1975, p. 100.

program, it may be forced to bargain over the impact such termination will have on employees.

Obviously, the list of mandatory topics of bargaining in both state and federal areas is long and will grow longer as time passes. Most disturbing for independent schools, perhaps, are the implications of applying mandatory items of bargaining determined in other than independent school, or even educational, settings. But let us not forget that all of these items do *not* have to be included in a contract; bargaining is a process of give and take. Thus, a long list of mandatory items placed on the table by the union will give management an opportunity to work out a series of tradeoffs: "If you want higher salaries, then you will have to reduce or eliminate your demands for . . ." In any case, the bargaining process is complex; the presence of a labor lawyer, preferably one having experience in academic bargaining, is essential at both planning sessions and bargaining talks.

5. *What sanctions can one party apply against the other?* This question has an obvious impact, not only on the outcomes of bargaining, but also on the educational environment itself. In private industry, such economic weapons as the employer's lockout and the employees' strike or slowdown are traditionally central to successful bargaining, on the assumption that these weapons are necessary to compel the parties to bargain seriously toward agreement. Regardless of the pros and cons of the use of economic weaponry in educational negotiations, for independent schools as much as for their faculties, the use of the strike and lockout may mean the difference between continued operation and going out of business. Few schools could withstand the long-term internal repercussions such a breakdown in communication would create, or the external damage to the institution's reputation among prospective students and their parents. More than almost all other institutions, the school, particularly the independent school, needs alternatives for settling such disputes. They may find it in *mediation*, *fact-finding*, and/or *arbitration*. Third-party intervention of this type is increasingly favored today in settling potentially disruptive disputes over the negotiation of new contracts.

Unions and professionalism

One troubling issue, as yet unresolved, involves the extent to which a union can serve the *professional interests* of teachers as distinguished from their *economic interests*. While unions can bargain over such items as merit pay, sabbaticals, and other professionally related benefits, such benefits are individual. To what extent can unions enfranchise their members with respect to school decision-making? In his *Independent School Teacher* editorial in the December 1975–January 1976 issue, Albert Shanker, president of the American Federation of Teachers, said, "A union can provide an opportunity for professionals to participate in decisions affecting their

professional lives without fear of intimidation and with the full sanction of law" (p. 17). Insofar as unions promote the development of deliberative forums at schools where they have never existed or have been ineffectual, unions may indeed perform this role. What is critical to note, however, is that *the union as an employee interest group cannot itself be a deliberative body where administrators, teachers, and nonteaching professionals can deliberate over matters central to the educational profession.* Thus, potentially serious issues develop when unions decide, in the words of one independent school union leader, to "begin commenting on and trying to implement curriculum proposals." Because union membership is often low and because unions exclude department chairmen (sometimes) and administrators (all the time), they eliminate the influence that many people ought, by the nature of their training and experience, to exert in deliberations over academic policy. Nor can unions as democratic organizations accommodate such important differences of status as seniority, special skills, or rank, which are inherent in the educational profession.

Since most public and nonpublic secondary and elementary schools have never had an effective collegial-governance system and look to the union to help provide it, unions may bargain for greater faculty participation in institutional decision-making. Where unions themselves become the vehicles for such involvement, however, the cause of academic professionalism is not well served. If they seek to establish new deliberative forums where administrators and faculty members can meet to formulate academic policy, they *may* serve the cause of academic professionalism. Yet to be determined, however, is whether faculty members who are also dues-paying union members can effectively switch hats when they serve as academic professionals in a nonunion setting. One independent school faculty member active in union affairs believes that they can: "We have to do it all the time anyway because of our small size."

In any case, the responsibility of the school head as educational statesman is clear. Traditional governance mechanisms may have to be altered so that a faculty that now plays a strong role in institutional decision-making will not turn to a union on this account. Where the faculty has not played such a role, the school head would be well advised to refuse to allow the union to bargain over academic policy and how it is made. If the choice comes down to agreeing with the union to establish a new deliberative forum where nonunion members may participate and where status differences are recognized, or agreeing with the union to let its leaders participate directly in academic-policy deliberation, the school head should clearly opt for the former. One always hopes that a joint administrative-union decision to develop a new deliberative body will be a step toward greater professional involvement in the affairs of the institution, not less. In any case, the outcome at this point is by no means certain.

5

Assessing the Consequences of Faculty Bargaining

Having examined the origins and nature of unions and the collective-bargaining process, we now shift to the consequences of bargaining. Are all the strain and stress of forming a union and having it bargain with management worth the effort to the average faculty member? Answers are as yet unclear, since so few independent and other nonpublic schools have unionized. But from those that do have faculty unions, and from experience in public secondary and higher education, we are beginning to have some idea of the positive and negative influences unions are likely to have for their members and the institutions in which they work. One earlier caution must again be emphasized: *The outcomes of the bargaining process are greatly affected by the characteristics and needs of specific faculties and by the characteristics of their schools.* The following positive and negative factors may be evident at some schools but not at others.

Positive aspects of faculty collective bargaining

Since economic factors are so important in bringing about unions, we must ask to what extent unions satisfy the need for higher wages and fringe benefits. The answer from higher education is not altogether clear. While at least one study has shown that wages have risen faster at institutions having faculty unions, other studies show the opposite. At the secondary level, the evidence is clearer. Many school districts have quickly had to increase faculty economic benefits in response to union demands threats, and strikes. Some have found increased remuneration an easy way to "buy out" union demands for more control over working conditions, particularly those related to academic policy—student-teacher ratio, class load, school calendar, and so on. *Negotiations in Catholic Schools* (Washington, D.C.: National Catholic Educational Association, 1974) states:

> Bargaining for Catholic school teachers has shown equally positive results in salary raises and working conditions. Since 1964, salaries for starting teachers in Philadelphia archdiocesan schools have risen from $4200 to $7400. The average salary for the teacher in the unionized diocesan high schools in Brooklyn in 1972 was $10,000. Although these salary levels are still significantly below those of public school teachers in

> the same cities, they do illustrate the effect of collective negotiations on salaries of Catholic school teachers. The same advances in improved working conditions are obvious in contracts negotiated for Catholic school teachers; sick leave and personal days are specified; length of school day and sizes of classes are regulated; teaching and supervisory assignments are limited (pp. 3-4).

However, increased economic benefits are only half the story. In the industrial sector, collective bargaining has long been viewed primarily as a means of preserving gains already achieved and of preventing labor's underbidding, which is particularly likely in a buyer's market or in a time of economic scarcity. Economic security, like job security, is important to the growth of unions. In many instances, if not most, unionization occurs in bad times, not good ones. Thus, preservation should not be overlooked in assessing the goals and consequences of union bargaining.

While only a handful of independent schools have faculty unions, correspondence with officials at those schools indicates that unions were able to entice maximum dollars out of management, putting the burden on administrative officers to show the limited ability of the institution to meet teacher demands and still stay in business. At one school, teachers were also able to secure the publication of a pay scale for teachers that everyone knew about and understood. In fact, the publication of a pay scale may become a common union demand in independent schools, since so many faculty members are critical of the more discretionary (and therefore more subject to abuse) merit system.

Job security is another major cause of faculty unions. Again, the evidence from both higher and secondary education is that unions seek to secure greater procedural safeguards by including this aspect of personnel decision-making in the contract and bringing it within the scope of the grievance system. Where unions have succeeded in contractualizing the substantive criteria related to faculty evaluation, they have achieved the equivalent of a tenure system. For this reason, school heads are strongly advised to keep substantive criteria *out* of the contract unless they wish to grant a tenure system. Obviously, by securing such benefits as a step plan for salaries, due process for personnel decisions, a grievance system for contesting management decisions, and similar procedures, unions curtail the ability of administrators to act arbitrarily or even hastily. As three authorities on collective bargaining in the industrial sector note, "Whether the union influence is weak or strong, it will always tend to force management to consider the probable consequences of its proposed decisions and to adjust those decisions accordingly" (S. H. Schlichter, J. J. Healy, and E. R. Livernash, *The Impact of Collective Bargaining on Management*, Washington, D.C.: Brookings Institute, 1960, p. 952). This should not necessarily be viewed as curtailing the power of management to govern; in fact, it may actually enable administrators to make difficult decisions *more easily*. For example, a well-worded retrenchment provision will enable school heads

to reduce the size of the work force in a rational manner, as in the case of one independent school head who was able to have included in the contract the right of the administration to institute mandatory review of tenure after five years. In a report prepared for the Carnegie Commission on Higher Education, Joseph W. Garbarino, an authority on academic collective bargaining, comments, "Forms of productivity bargaining are more likely to be achievable (under bargaining) since a faculty concession on work load, for example, can be linked to higher pay or other benefits. Faculties enjoy the protections of many well-established 'work rules' that might be difficult to challenge directly through traditional procedures but that might be changed as part of a bargaining package. Sophisticated administrations may in the next decade be able to take advantage of these characteristics of bargaining to make more changes more easily than they could through traditional structures" (*Faculty Bargaining: Change and Conflict*, New York: McGraw-Hill, 1975, p. 156). The key word here is "sophisticated," for turning bargaining with a faculty union into an advantage without at the same time destroying school morale is a delicate task. Only the most skilled administrators, with the continuing advice of experienced labor counsel, will be able to deal fairly with unions and, at the same time, strengthen the administration of the school.

Bargaining clearly increases the faculty's influence in governance. In some cases, it is the first time faculty representatives have had an opportunity to consult with administrators about serious school problems. Even the possibility of unionization may be enough to force an administration to consult more often with faculty members. Aside from forcing the administration to recognize and deal with a faculty union, bargaining may enfranchise a faculty by establishing joint faculty-administration committees to resolve difficult problems outside the bargaining arena. Or it may establish a new faculty governance body. (Unfortunately, it may also succeed in replacing previous deliberative bodies with a union committee structure, a matter of serious concern, as we have already noted.)

Finally, bargaining inherently has the potential to manage conflict within the institution. Hard times make conflict more likely to break out as painful decisions have to be made. To the extent that a contract rationalizes and legitimizes administrative action, it helps prevent conflict over "panic decisions" reached without careful thought. And to the extent that a contract provides an opportunity for challenges to administrative action through the grievance system, it enables potentially explosive and disruptive conflict to be channeled and resolved without unduly agitating the school community. For this reason, collective bargaining has been endorsed by the Carnegie Commission on Higher Education (see its *Governance of Higher Education*, New York: McGraw-Hill, 1973, p. 51) as a means of stabilizing colleges and universities that are experiencing high levels of conflict. A maturing collective-bargaining relationship may help faculty leaders and administrators learn to work with one another within

the constraints and realities of the independent school setting. Many explosive situations may, in time, be avoided by a phone call between the two respective leaders or through periodic union consultation sessions.

So far, of course, unions are new in much of American education, and conflict has not been noticeably reduced. In time, however, a negotiated contract may introduce the conflict-resolving mechanisms that are now absent in most institutions. Once again, the imminence of unions may force administrations to establish systems of conflict management within a school prior to the election of a union. Insofar as such action represents an employee benefit without the cost of a union, it ought to be explored.

Negative aspects of faculty collective bargaining

Academic bargaining carries with it many disturbing consequences as well as positive ones. Unions traditionally serve the most disenchanted, who are often the first to urge unionization, and who most often join the union and thus establish its bargaining position. Not surprisingly, it is the disenfranchised who receive the lion's share of benefits. Where other members of a teaching faculty, such as "the old guard," refuse to join a faculty union, they do not share in developing union policies, even though many union-won benefits accrue naturally to them as members of the bargaining unit. (Remember, the union must by law accord *everyone* in the bargaining unit fair representation, even if he or she is not a dues-paying member.) Others who lose out as a result of collective bargaining include administrators, who must now pay a different sort of attention to the consequences of their actions and may even have to grant the faculty a larger role in institutional decision-making; committees and agencies whose jurisdiction prior to the union included advising on wages, hours, and other terms and conditions of employment; and students wherever they have gained substantial involvement in school governance. Since bargaining is a bilateral process, there is no room for students. In fact, studies show that unions do not usually place student interests ahead of those of their members, despite rhetoric to the contrary (see F. R. Kemerer and J. V. Baldridge, *Unions on Campus: A National Study of the Consequences of Faculty Bargaining*, San Francisco: Jossey-Bass, 1975, pp. 201-206). Actually, this is not surprising if one views a union as an *employee* interest group.

For the schools themselves, faculty unions may create new problems and tensions, particularly during the first few years of contract negotiation and administration. School heads accustomed to viewing faculty members as colleagues will find a distinct polarization setting in. Most school administrators have found that they must be diligent in seeing that the contract is fulfilled to the letter. This is particularly true where department chairmen, often viewed as the front line of administrative influence, are themselves bargaining-unit members. One study of unionized community colleges shows many presidents taking on a watchdog role over faculty members,

thus promoting tension between faculty and administrators. One example cited is the president's responsibility to supervise faculty sick leave and make certain it is not abused. On the other hand, some administrators have found new respect coming from their board members, who increasingly view the unionized faculty as "the opposition." Since many, if not most, independent school trustees come from the business world, the faculty is almost certain to find that a union damages their relations with board members, and, to a lesser extent, with upper-middle-class parents, who are likely to have an anti-union bias. However, students of high school age may side with their unionized teachers, since so many of them are inclined to be suspicious of authority. Whatever the reaction of students and parents, reaction there will be. And whenever the school community is balkanized into competing factions, the personal, individual setting of the small independent school is damaged.

Another likely negative result of unionization is the disproportionate power unions may wield in relation to their numbers. Since union leaders know that the administration risks court action by dealing with nonunionized groups, these groups often lose power. As formal interest groups, unions are highly visible and vocal. Only the most confident administrative strategist can avoid the temptation to overreact to union threats and demands. To the extent that school officials pay greater attention to faculty unions than their rhetoric warrants, they themselves contribute to the tendency to grant unions disproportionate power over institutional affairs.

One of the most disturbing consequences of unionization is the resulting increase in bureaucracy. First are the complexities of the union itself; union policies must be governed by internal operating procedures. Second, bargaining is a slow process, for both union and administration must carefully consider their constituents. Third, after a contract is ratified, grievances and changes in administrative policies usually involve the union and require its consultation. The contract itself establishes new rules and procedures to be followed. Since a contract often requires that other documents be reworked substantially, it contributes to burgeoning bureaucracy throughout the institution. As the contract grows more detailed—as it is bound to do over time—more red tape is produced to complicate the routine of school administration. Such complexity has a time as well as a dollar cost. One independent school reported setting aside $20,000 for contract negotiation alone. This figure is likely to balloon rapidly as new staff members are hired to handle the details of contract administration (particularly teacher evaluation and grievance-processing) and to prepare for new rounds of negotiation (developing a data base for faculty salaries and costing models for pricing out union demands). Other new costs include attorneys' fees, registration fees for crash courses in the art of contract negotiation and administration, and vastly increased duplicating and record-keeping.

Directly related to increased bureaucracy is the impact of a binding contract on innovation and change. Will schools be able to make needed innovations, even if this means a reduction in faculty numbers? Will the procedural safeguards become so elaborate that they hamstring administrators' ability to make staff changes and other modifications related to conditions of employment (student-teacher ratio, class size, class assignments, extracurricular duties)? At this point, the answer is unclear. What is clear is the potential administrators have for determining the ultimate impact of faculty collective bargaining.

The strategic role of the administration

It may seem odd to suggest that the administration can determine what the union's legitimate interest should be, but in many instances the administration is the *only* entity, aside from the union itself, that is in a position to do so. Faculty members have vested interests and do not always speak with the best interest of the school at heart. Where unions are concerned, many faculty members don't join, or, if they do join, they don't go to meetings. Only a handful take the time and energy to help establish union policy, and a union is thus often "captured" by the most discontented. The consequences of minority rule can be disastrous for the school if the administration does not assert itself.

Unlike the faculty, administrators are relatively few in number and have disproportionate control over school resources and power. They are in a unique position to control a developing union where union membership is low, traditional faculty governance mechanisms exist, and external pressures are manageable. By dealing with unions fairly and carefully on mandatory subjects of bargaining (generally economic), but insisting that school governance is the prerogative of the administration (but not the board) and nonunion deliberative agencies, administrators can avoid contributing to the growth of a faculty union. (For a discussion of leadership attributes needed for effective labor relations, see question B.6 in Appendix A.)

If extreme economic pressures or pressures from meddling board members tie a school administrator's hands, union power will grow. School heads have a delicate task ahead: too much accommodation will turn school management over to the union; too much heavy-handedness, even if it results in destroying the faculty union, will so polarize the school that it may become unmanageable. Hidden and pent-up conflict is disastrous to effective school functioning. In short, the ball is in the court of school administrators. Only by educational statesmanship, political expertise, and luck can they forestall the appearance of unions or, where they are present, carefully control their role in school affairs. As always, deeds speak louder than words.

Appendix A
Questions and Answers

A. Unfair Labor Practices and Organizational Campaigns

1. What are the "unfair labor practice" provisions of the National Labor Relations Act? What happens if an administrator is accused of an unfair labor practice during an organizational campaign?

The National Labor Relations Act contains a comprehensive list of unfair labor practices. Section 8(a) provides that it shall be an unfair labor practice for an employer

a. to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in the NLRA;

b. to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;

c. to encourage or discourage membership in any labor organization by discrimination in regard to hiring or tenure of employment or any term or condition of employment;

d. to refuse to bargain collectively with the representatives of employees.

Through a series of decisions, the National Labor Relations Board has tried to ensure that the period preceding the election of a bargaining agent be as close to a "laboratory setting" as possible. Thus, any conduct by an employer that appears to be discriminatory or coercive may be challenged. Violation of any of these rules or conditions by an employer may result in the NLRB's setting aside an election or even reversing the results of an election in which the employees have elected *not* to be represented by a labor organization. State practice concerning both unfair labor practices and the remedies for their violation is similar.

Because this area is so complex and is governed by technical restrictions, it is essential that school heads and boards employ a labor lawyer who is familiar with pertinent labor law to help avoid unfair labor practices and, at the same time, to take advantage of those provisions and rulings that allow the employer to tell his side of the story.

2. If a local faculty group comes to the school head's office and requests recognition as the spokesman for the faculty on wages, hours, and other terms and

conditions of employment, what should the school head do? What if the group says it only wants to present the faculty position, not negotiate a contract?

Most commentators believe that a secret-ballot, government-regulated election is the fairest way for employees to choose union representation. Unions are apt to exaggerate the extent of their support when confronting the employer with a stack of "authorization cards" purporting to show that the union has met, by a wide margin, the required majority endorsement of employees in the bargaining unit. As one labor lawyer has noted, the validity of such informal showing of support is not very high. Thus, where a faculty group seeks recognition as the exclusive spokesman of the faculty for wages, hours, and other terms and conditions of employment, the best tactic for the school head is to acknowledge receipt of the demand for recognition, refuse to so recognize the union (or even to view the union's stack of authorization cards), and seek legal advice on how to proceed.

However, if the faculty elects a small group to *talk* to the school head about salaries and benefits, not to *bargain* over them, the head may well be faced with an entirely different situation—one with which he or she might be well advised to comply, in the interest of opening channels of communication. It is highly important for the head to determine just what the intention of the faculty group is. Having a witness present or writing and co-signing a statement of intent may be a good idea. When in doubt, the head should refuse (in a pleasant manner) to take any action on the request until he or she has had time to study the request and discuss its implications with others in the school, on the board, and/or with legal counsel.

3. If the school head learns that some of the faculty are "talking up" unionization, can he or she meet with them (1) to find out why they are doing so, and (2) to try to discourage their efforts?

This is a very sensitive area because it tends to intrude on those "laboratory conditions" deemed so important by most labor boards for a fair election. An employer is generally permitted to campaign against a union by speaking with employees and writing to them. While an employer has the right of free speech, he must be careful what he says, for two reasons: (1) anti-union bias may provoke employees to embrace a faculty union, and (2) anti-union bias may constitute an unfair labor practice, depending on the substance of what is said or written, where it is communicated, and who communicates it. (Under most labor laws, a school head is responsible for the actions of the administrative staff during an organizational campaign. This means that the head must work closely with the staff to keep them informed about what they can and cannot do. It also means that the head should be careful about talking candidly with department chairmen and others if he or she believes that they may be lumped together with the faculty in a bargaining unit.)

Generally, an employer's right to communicate includes asking employees to attend meetings where the employer may speak to them during working hours (except during the 24 hours preceding the election) about unions and collective bargaining, comparing the school's salaries and benefits with those of other schools, explaining how unions are financed, and providing similar factual

information. Some commentators maintain that the employer has an *obligation* to campaign against a union on behalf of other constituencies he or she may represent. Thus, the school head may wish to devise a careful plan, including a timetable, to attempt to defeat faculty unionization. It should be noted, however, that a negative attitude toward the union may boomerang at the bargaining table if the union is elected. Such divisiveness makes constructive bargaining relations hard to establish, at least at first. Threatening employees, even indirectly, if they vote for a union, or promising them special rewards if they don't, is usually improper practice, subject to challenge. Once again, the complexity of the pre-bargaining setting is so great and the stakes are so high that experienced legal counsel is essential. But even if present, legal counsel cannot tell the school head what strategy is in the best interest of the school. Only the head can decide that. In short, the head has to be sensitive to the faculty, their needs, and his or her own ultimate hope for maintaining or achieving productive administrative-faculty relations.

4. Can the school head keep nonemployee union organizers off the campus?

This area of the law is unsettled. The rule seems to be that in the private setting the employer may keep off-campus union solicitors from school grounds, provided the union has other means of reasonable access to employees. Obviously, the situation at a boarding school, where faculty members are for the most part located on the campus proper, could present some real difficulties.

However, a newly instituted rule by the school against the distribution of union materials by nonemployee solicitors on school grounds and property might be successfully challenged if the school's administration and other types of organizations are permitted to distribute literature or sell products to employees.

Where faculty members themselves are soliciting on behalf of union groups, the school is probably limited to prohibiting such solicitation in classrooms and other places considered "working areas." This does not apply, however, to a faculty room, cafeteria, or parking lot.

Since solicitation rules are usually highly suspect and often constitute grounds for setting aside a union election, the expert advice of a labor lawyer is, once again, essential.

5. Can the school head choose to deal with an independent body set up by an anti-union faction of the faculty?

The answer is generally no. Such favoritism may constitute interference with the formation of a labor organization by employees, particularly when another group on or off campus has expressed an interest in competing in a union drive.

B. Negotiating and Administering a Union Contract

1. The school head is more concerned about the unionization of nonprofessional maintenance staff than of the faculty. What are the significant differences

between professional and nonprofessional personnel relations? What are the implications for the faculty?

For the most part, the law makes no distinction between types of employees or institutions in the collective-bargaining process. Mandatory subjects of bargaining, for example, are usually the same for all employees. Of course, some items will have no relation at all to some employees and some organizations, and for that reason they will not be bargained. The one exception to this similarity of treatment concerns the *nature* of the bargaining unit. Most laws, including the National Labor Relations Act, mandate separate units for professional employees or allow them to "separate out" of units containing nonprofessionals. Under section 9(b)1 of the NLRA, for example, it is stipulated that the National Labor Relations Board shall not "decide that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit."

Negotiating a contract with nonprofessionals differs little from negotiating a contract with professionals. The characteristics of bargaining and contract administration are the same. However, school heads can expect the bargaining demands of nonprofessionals to differ considerably. They are much more interested in the traditional economic subjects of bargaining—wages, hours, sick days, fringe benefits. They are not as interested in such professional items as sabbaticals, office space, tenure, and governance rights. Since everyone wants to be part of the decision-making process in a school to some extent, however, nonprofessional employees may want to be consulted about proposed changes that affect their work life. In any case, they will probably take the traditional approach of industrial workers: management has the prerogative to make changes, and the union reserves the right to challenge them through the grievance process.

Many schools will probably find a greater drive to unionize by nonprofessionals than by professionals, simply because many of their counterparts in industry and government are organized. Thus, schools can expect "patterned bargaining," should these groups unionize: nonprofessional employees will demand pay and benefits equivalent to those accorded their counterparts outside of education.

The implications for a faculty-union movement are clear. One of the causes of union growth in higher education is the effect that unions of nonprofessionals have on doubting faculty members, many of whom, after watching nonprofessionals benefit from the process, rapidly lose their reservations about unionizing and collective bargaining. Thus, administrators may be forced to advance faculty salaries and benefits faster than intended in order to forestall a faculty union movement. Educators everywhere are more and more inclined to compare their wages and benefits with those of unionized nonprofessionals and openly ask why they aren't compensated at least as well, if not substantially better.

2. What happens when negotiations with union representatives break down?

The adversary process of negotiating a contract sometimes grinds to a halt. Neither side wants further meetings or conversations, considering them a waste

of time. When such blockage occurs, the parties are said to be "at impasse," which has the same meaning in the private and the public sector, although different procedures may be used in each for resolving such stalemates. Under the National Labor Relations Act, the sides are encouraged to use local or intrastate mediation services unless the consequences are substantially interstate in nature. In the latter instance, the parties may draw on the services of the Federal Mediation and Conciliation Service. The Taft-Hartley Amendments (1947) to the NLRA outline the part mediation is to play in the negotiation process. If one or both sides do not wish mediation, they may use economic weapons: the lockout or strike. However, these weapons are more familiar in the industrial sector: there may be little incentive for the administration to close the school or for the faculty to strike for benefits that are clearly beyond the capacity of the school to provide. The parties may thus have greater incentive to invite a neutral third-party mediator to help them reach a settlement. It is important to note that the mediator does not arrange the settlement but merely serves as a "communications catalyst" to promote compromises where they seem likely and to foster general understanding and communication.

Alternatively, the parties may decide to employ an arbitrator to settle the dispute. The arbitrator listens to both sides, studies the issues, and then makes a binding decision. As noted earlier, contract arbitration is increasingly favored as a means of settling impasses, despite a good deal of criticism of this approach.

Under most state collective-bargaining statutes, the parties may not use economic weaponry to resolve disputes. Consequently, they must resolve impasses by employing fact-finders or mediators or by agreeing, as a last resort, to binding arbitration in accordance with the provisions of the appropriate statute and related court decisions.

For more details and general advice on preparing for and engaging in bargaining, see J. David Kerr, "Preparation for Bargaining," and Ray A. Howe, "Dramatic Action of Bargaining," in Terrence N. Tice and Grace W. Holmes, eds., *Faculty Bargaining in the Seventies* (Ann Arbor: The Institute for Continuing Legal Education, 1973), and Herbert Schwartzman, "The Administrator's Approach to Collective Bargaining," *The Journal of College and University Law*, Summer 1974.

For detailed information about fact-finding, mediation, and arbitration to resolve impasses in public-sector bargaining with faculty unions, see Donald Wollett and Robert H. Chanin, *The Law and Practice of Teacher Negotiations* (Washington, D.C.: The Bureau of National Affairs, Inc., 1970), Chapter 6.

Because this area of collective bargaining is so extensively affected by the terms of the law and by court decisions interpreting these provisions, administrators are urged to consult experienced legal counsel for more information before proceeding. An unfair labor practice charge can turn out to be prohibitively expensive even if it is not ultimately successful.

3. Should administrators always simply react to union demands at the bargaining table, or can they take the offensive?

The traditional approach has been for unions to present proposals and for management to react. However, some administrators believe that they can control the bargaining process better if they take the initiative. This assertion has

validity, but much depends on the local situation. For example, at the first bargaining session after a union has been selected, management may wish to assume a low profile so as not to give the impression of being out to overwhelm the fledgling union and thus provoke greater conflict than may already be present.

4. Which is preferable—a weak union having few members, or a strong union in which most of the faculty is enrolled?

There are two views on this subject. As noted in the discussion in the text, union security, agency shops, and other forms of security arrangements force employees to give financial support to the union. As one administrator notes, "I sure as hell would want a say on how my $200 are spent." But many who do support unions under this type of union-security arrangement do not in fact become union members. Of those who do join, a large number rarely come to union meetings and thus are not part of the union policy-making process. If faculty members are content to let the most vocal rule the union, they have no cause to complain about the results. Administrators, however, may prefer to have most of the faculty involved in union matters because this forces the union to be more responsive to the interests and concerns of the faculty as a whole and not just to those of a distinct minority group.

On the other hand, a weak union is more vulnerable to competition from other unions and also to an employee move to do away with it altogether. If the administration wishes to defeat a union, it is clearly more apt to be able to do so with a weak union than with a strong one. But if it has to live with a union representing a distinct minority of employees until such time (if ever) as the union is ousted, the short-range trauma may not be worth the long-range possibility—and it is *only* a possibility, not a certainty. In education, very few unions have ever been ousted by their members in a decertification election, and, in almost all cases where this has happened, a new union has been voted in to replace the old one.

So, to whatever extent the school's administration has any influence over the situation, the answer is a matter of individual preference and depends greatly on the particular circumstances.

5. Isn't it true that, once a union is in, the administrator's hands are tied?

Not at all. In fact, as we noted in the final section of the text, the give and take of bargaining may make it far easier to arrange trade-offs, which make it easier for school administrators to make tough decisions. Productivity bargaining, however, requires great skill and has not been evident in most negotiation sessions to date (see questions C.2 and C.5, below). Administrators have not yet learned the tremendous potential they have for controlling the outcomes of bargaining.

6. What techniques should an administrator learn in order to deal successfully with factionalized employee groups and with unions?

These techniques do not really differ from those needed to administer a school

successfully, although their degree of importance has shifted. Because collective bargaining as a decision-making process is so political, the role of the school administrator as a political strategist is highlighted. Schools have always been political in the sense that the values and goals of on-campus constituencies (board members, faculty members, students, and staff) conflict to some degree with those of off-campus constituencies (parents, alumni, and others). Disagreement also occasionally surfaces between and within constituencies both on and off campus. Thus, conflict in many schools has become commonplace. School heads increasingly find that effective assertion of their authority is governed by the willingness of school constituencies to recognize it.

External conditions have recently increased conflict dramatically between faculty members and administrators at many schools. In this politicized atmosphere, the implications for leadership (and leadership training) are clear. First of all, leadership is *activity*. The school head who views himself as only a symbolic figurehead is not likely to be very successful. Second, administrators must assert themselves in the following ways.

a. Within the school's means, deal with the faculty union fairly and carefully on economic matters and other issues considered mandatory subjects of bargaining.

b. Clarify governance roles. How are existing faculty committees to relate to the union? How are board members to relate to the union?

c. Maintain a strong bargaining stance in order to restrict the expansion of bargaining into areas traditionally reserved for deliberative forums and or other groups, such as students and board committees.

d. Do not surrender control of the bargaining process to those who do not have the school head's responsibility for administering the school or the head's knowledge of and experience with education in general. Lawyers, labor-relations experts, and business-oriented board members do not always understand all of the implications of the issues discussed at the bargaining table, and they do not have to administer the contract and live with the faculty. While they can provide advice and are often indispensable, they should be considered as *advisers*, not staff members. The school head who does not hold the reins will still find that he or she is held responsible for the consequences. In short, *the definition of the head as the chief operating officer of the school ought to be made very clear at the onset of unionization*.

e. See that the staff as well as the lawyers and others brought in to assist with bargaining get complete and accurate information about the special nature of the independent school and the concomitant challenges that bargaining poses. Develop sophisticated data to use in supporting or refuting bargaining issues. Keep outside groups and the general public informed where necessary. In short, assert control over the dissemination of information.

f. Insist that students and parents be protected. Persistently advocating student interests, articulating the institution's responsibilities to stu-

dents, and assessing the impact of collective bargaining on educational services are prime obligations of administrators.

This last point highlights another technique school heads need in order to maximize chances of assimilating collective bargaining successfully into independent school operation. School heads need to be educational statesmen as never before. The political image carries an unfortunate connotation—that "politics" means "dirty politics." Unless school heads are sincere in their assertions and employ accepted techniques, their chances of success are compromised. Statesmanship also implies knowledge and vision about the *future* of the school. If administrators serve as *educational* leaders, they fill a power vacuum that may exist when highly vocal union leaders demand that faculty members withdraw from pre-existing deliberative forums. By refusing to give in to union demands for direct access to educational decision-making, while at the same time encouraging faculty members to work as professionals with administrators in developing educational policy, school heads may find that faculty members can indeed switch hats.

7. You say that school heads should encourage faculty members to "work as professionals with administrators." Doesn't the coexistence of such deliberative forums with a faculty union violate the rights of the bargaining agent to be the exclusive representative of the employees?

When deliberative forums are involved in matters directly related to mandatory subjects of bargaining, the answer is yes. A National Labor Relations Board hearing examiner ruled in 1974 that the Argonne National Laboratory Senate was not a labor organization under the federal law and therefore could not communicate with administrators over employment conditions. As a result of his ruling, the Argonne senate was left with the option of either limiting its activities to strictly professional issues or converting into a union. In June 1975, the NLRB itself ruled that the Northeastern University Faculty Senate was not a labor organization because it depended on the university for support and functioned historically as a group of advisory committees that made recommendations to the administration. The NLRB also rejected the contention of the university that the faculty handbook was a contract and thus barred an election for a bargaining agent under federal law. When asked what impact a union would have on the continued existence of the faculty senate and its advisory committees, the majority refused to respond, but one member, while both concurring in and dissenting from parts of the majority decision, did.

> In my judgment this Board [NLRB] is statutorily required to apply the exclusive representation principle to those colleges and universities over which it asserts jurisdiction. Undoubtedly, this will affect the ability of faculty members to utilize existing governance structures in dealing with the administration over "rates of pay, wages, hours of employment, or other conditions of employment." The precise impact which selection of a bargaining representative will have upon such existing structures, however, is impossible to predict at this time. The representative may insist upon its right to be consulted exclusively with respect to all subjects of bargaining. On the other hand, the union may be willing to leave certain matters

> to existing forums. Presumably, such questions will be addressed at the bargaining table. In any event, I think it unwise for this Board, through continued silence on the exclusive representation issue, to create the impression that selection of a bargaining representative need not necessarily have an impact on existing governance structures.

If this rationale were applied to independent schools, the operation of deliberative forums could be ended altogether (which would be unfortunate) or, more likely, be confined to areas other than wages, hours, and other terms and conditions of employment. Areas identified as permissive topics of bargaining fall into this category because they are normally matters of management prerogative that *may* be bargainable, if both sides agree. What is suggested here is that management hesitate to consent to bargain over such issues as curriculum and grading policy and also hesitate to refuse to allow deliberation of these matters in an arena outside of bargaining. In short, if faculty members are allowed to work with administrators on academic committees and in other ways outside of bargaining, they will be less likely to command their union leaders to negotiate these items. The central—and unanswered—question remains: To what extent can those faculty members (often a minority) who are dues-paying union members switch hats when serving as professionals in deliberations on nonbargainable matters with fellow academicians, including administrators?

C. Assessing the Impact of Faculty Unionization on the Independent School

1. Aren't unions in education becoming unpopular?

Not with teachers and other members of the faculty. Teachers' unions have never been popular with the general public and legislators. However, there has, until recently, been grudging agreement that unions could help the underpaid, overworked teacher improve his or her position. Today, with dramatic increases in faculty salaries, the inconvenience of teacher strikes and slowdowns, the rise of powerful teachers' unions, and particularly the poor economic climate, opposition to faculty unions is growing. It has become popular to oppose public-employee unions. But whether such opposition will have any effect on independent school faculties is unclear. Possibly the growth of permissive state bargaining laws will slow down, thus curtailing the chances of independent school faculties not covered by federal law to organize. So far, however, such a trend has not appeared.

2. Unions are supposed to encourage featherbedding. Is this true?

"Featherbedding" is best defined as high reward for low productivity. "Make work" arrangements of this type are best illustrated by the union-supported use of firemen on diesel locomotives, which have no need for them. Unions work for their members. Thus, when threatened with job losses because of technological improvements or curtailment in plant production, a union will fight to see that its workers are "saved harmless," that is, not adversely affected. Of course, if management consents to featherbedding, unions are successful in their objectives.

3. Unions are the antithesis of one's usual notion of an independent school faculty. Won't they antagonize parent groups and drive prospective clients away?

Quite possibly. It therefore behooves administrators and faculty members to act as professionally as possible. One way is to minimize union-management rhetoric, the "red flag" words. Thus, "discuss" is substituted for "negotiate," "spokesman" replaces "exclusive bargaining agent," "agreement" replaces "contract," faculty members are not called "employees," and administrators are not "management." By keeping the language cool and agreeing to consult one another before making statements to outside groups (parents, alumni, prospective students and their parents) and to the news media, faculty leaders and administrators can do much to prevent "institutional bad blood" (as one independent school faculty union leader put it). The trustees and parents are generally nervous about the idea of a union. The word conjures up all sorts of little labels and boxes that we all must fall into. We need to remain sensitive to this, avoid red flag words, and be patient.

4. Wouldn't a union price an independent school out of business?

Much of the answer here depends on the willingness of administrators to open up full information about the financial status of the school and on the willingness of the faculty to try to understand and accept it. Not all union demands have to do with economic issues, and where noncostly but satisfying trade-offs can be made, they should be discussed. Of course, as we noted at the top, bargaining and contract administration represent new fixed costs that the school must absorb regardless of the outcomes of bargaining. In addition, an inadequate management-information system and/or weak administrative bargaining may yield settlements that are impossible to finance in the long run without damaging the school. Again, much depends on the preparation, skill, and institutional commitment of the parties. But there is no question that, as institutional guardians, administrators bear prime responsibility for preventing enrollment and economic that negotiation can bring.

5. Isn't it wise to deal liberally with union demands, since a well-compensated faculty is a productive and happy faculty?

Many administrators have found out the hard way that such a connection does not exist unless it is *made* to exist. Most administrators agree that a greater productivity is to result from higher contractual benefits, it must be made so through related contractual provisions. One college president put it, "No maximum dollars we must be guaranteed maximum output."

6. Will administrators and faculty union leaders ever be able to work together to solve such difficult problems as retrenchment and program development? After all, aren't we professional colleagues?

Ideally, neither side will let bargaining mask its love for and dedication to the school and its students. If both sides accept the facts that discontent does exist, that a vote for a union must be held when a large number of the faculty demand it, and that bargaining cannot ignore institutional constraints when a union is chosen, they will have taken the first step toward a workable relationship. If both sides are deeply committed to the school, its purpose, and its future, there is no doubt that such a relationship, strong enough to solve difficult problems, can develop. But administrators and faculty members have to rise above the hostilities, demands, and recriminations that so often characterize educational unionization. Responsibility for causes and consequences is shared by everyone connected with collective bargaining.

Appendix B
Principles of Personnel Policy

Regardless of concern about unions, good management practice suggests that every school ought to have a clearly announced personnel policy covering matters of importance to the administration and to the faculty as academic employees. Such a policy could become part of a general faculty handbook, or it could be given to new teachers at the time of employment and be updated periodically thereafter.

Since such personnel issues as evaluation, job security, and appeal procedures play a major role in bringing about faculty unions, school heads would do well to review their present practices in these areas and take steps to correct deficiencies that could lead to collective action.

Because independent schools vary so widely in their operation, the suggestions contained in this appendix do not address "localized" subjects (wage levels, fringe benefits, etc.), nor do comments about personnel policy apply to employee groups other than faculty members. However, modern management techniques suggest that similar policies should certainly be developed for administrators and nonfaculty employees.

Given the concerns of faculty members and the pressures on school authorities by external governmental agencies to act fairly in making personnel decisions, we believe that the topics covered below should be addressed in all personnel policy statements irrespective of unionization. Once these topics have been addressed, administrators should be scrupulous in observing the standards set down. Courts are increasingly intolerant of shoddy personnel practices in both the public and private sectors of education, and they may hold administrators and board members *personally liable* for failure to take corrective action. (For a discussion of some recent trends, see William C. Porth, "Personal Liability of Trustees of Educational Institutions," *Journal of College and University Law*, Fall 1973. The trend has accelerated since Porth's article was published.) We know of one recent case in New Jersey where a state court levied fines and costs of over $100,000 on administrators and board members of a community college because they failed to take steps to learn about and then follow the dictates of the developing law pertaining to the rights of their faculty members.

Following our discussion of principles, we present a sample personnel policy statement constructed, for the most part, from policies in effect at several independent schools.

Principles Common to All Personnel Policies

1. Faculty hiring procedures. We believe it is essential that personnel policy statements include a brief section on how employees are initially selected. Since all schools are subject to provisions of Title VII of the Civil Rights Act of 1964 forbidding discrimination in employment, and since they may be subject to other federal or state legislation governing fair employment practices, we recommend that a statement on nondiscrimination be included in such a section.

2. Faculty compensation. While some schools, particularly those that use a "step system," may wish to present actual figures, we believe the *method* of handling salary increases is more important to most faculty members than actual amounts. Where annual increases are a matter of administrative judgment, it would be useful to state in a personnel policy the factors upon which that judgment is based in order to forestall charges of "administrative arbitrariness" or "administrative favoritism." Where supervisors (department or area chairmen) make these decisions, the standards they employ should also be included here (or under the evaluation section). In any case, this section should indicate who has the final say on faculty compensation and what the bases for judgment are.

3. Faculty contract renewal and continuing appointment. Essential to any personnel policy is a clear statement of the school's contractual procedures. Are contracts for one year only, with no expectation of renewal no matter how often they may in fact have been renewed for a given employee? Is there a probationary period followed by a tenure-like system that establishes an expectation that the contract will be renewed? Under what circumstances can a continuing appointment be terminated?

While independent schools as private institutions are not covered by the due-process clause of the Fourteenth Amendment to the United States Constitution, which requires that certain procedures be followed in terminating public employees, they could be bound by similar local or state laws. In any case, they are subject to the dictates of contract law. Increasingly, courts are applying a "fairness" approach to contract interpretation; that is, if a strict reading of the terms of a contract would have unreasonable consequences for one of the parties, the court may choose to interpret the contract in such a way as to assure that equity is achieved. A poorly worded contract is little better than no contract at all, since it really doesn't set forth the terms of employment to the mutual understanding of both parties. Given the complexity of developing personnel-policy provisions such as these, and given the likelihood that employment decisions will be challenged more and more in the courts or before labor boards, we suggest that every school head have legal counsel help develop the school's personnel-policy statement. In order to assure fairness—which should be the guiding principle of any employee practice—the statement must reflect the school's intent and be in accord with the law.

4. Faculty workload. This section sets forth the duties teachers are expected to perform. If they are generally expected to assume responsibilities other than classroom teaching, this ought to be made clear. In other words, the *nature* of the work a contracted employee is expected to perform and the *manner* in which it is to be performed (for example, under the supervision of a department chairman or of the head of the school) ought to be stated in general terms in this section. It is not enough, we believe, to leave such matters to individual contracts.

People will inevitably ask why others of equal status do not perform similar duties. A clear statement of the school's *policy* on workload ought to be contained in the personnel-policy statement; specific assignments and expectations can be left to individual contracts.

5. Faculty evaluation. Where faculty members can reasonably expect a contract to be renewed (as, for example, under a system of continuous appointment), it is important to have a system of evaluation. An evaluation program can provide the basis for a decision not to renew an employee's contract and furnish the necessary supporting evidence, should nonrenewal be challenged legally.

More important, it is in the best tradition of the educational profession to conduct periodic evaluations of all school employees as a means of improving individual performance and strengthening the over-all performance of the school. Whatever evaluation system is developed ought to relate directly to the teaching assignments and other duties (workload) of the teacher, and it ought to provide an opportunity for the person evaluated to correct deficiencies. An evaluation policy that is not corrective but is used only to furnish evidence for terminating an employee does little to improve the quality of teaching, to help the employee, or to build faculty trust in the administration. As already noted, the amount of trust faculty members have in administrators has a strong inverse correlation with union sentiment.

Because trust is important and because evaluation is such a sensitive and complex process, administrators should have faculty members participate in drawing up the evaluation procedure, should allow supervisors to tailor general guidelines to their particular discipline or activity, and should themselves undergo some form of evaluation. (See David Mallery, *The Strengths of a Good School Faculty: Notes on Evaluation, Growth, and Professional Partnership of Teachers*, Boston: National Association of Independent Schools, 1975, for a good discussion of evaluation and sample evaluation instruments.)

It is important that evaluation be based on *specific objectives*. Since objectives will vary, depending on individual responsibilities, they probably should be worked out at the department or area level and not be part of a general personnel-policy statement. In any case, general statements should be avoided in evaluation reports. A specific job description followed by a careful evaluation related to stated objectives is most satisfying to school and faculty member and has the best chance of supporting decisions that could be subject to challenge within the school or in the courts.

6. Faculty sanctions. Occasionally a faculty member may act unprofessionally, but not to a degree that warrants dismissal or nonrenewal. If administrators wish to have a school-wide discipline policy for faculty members, it should be part of the personnel-policy statement. Such a policy may be expressed informally, by

simply noting that department or area chairmen have authority to apply sanctions to faculty members and that those protesting the exercise of that authority can appeal to the head of the school. Or it may be more elaborate, perhaps paralleling a student discipline system (which has been the primary stimulus for the development of faculty discipline systems). Whether formal or informal, the policy should include the rudimentary elements of due process and the right of appeal.

7. **Faculty appeal system.** Many personnel decisions, particularly those having to do with job security, are apt to be challenged, for state and federal legislation increasingly affects the employment relationship between administrators and faculty members. For example, the Department of Health, Education, and Welfare has issued guidelines for the implementation of Title IX of the Education Amendments of 1972, pertaining to sex discrimination, which state: "A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part."

Even though a particular school may not be covered by Title IX and other federal and state fair-employment laws of this type or be affected by similar requirements (which are often part of student financial aid legislation), faculty members may well expect school officials to abide by them. A key element of current employment legislation involves giving employees the opportunity to appeal adverse decisions that directly affect them. Such a system can help channel and resolve potentially disruptive and demoralizing disputes between faculty members and administrators and certainly lessen the chances that a charge of administrative arbitrariness will be sustained by a court or other outside agency.

An appeal system should address the following concerns.

a. *The kinds of matters that can be brought to appeal.*

b. *The people who may use the system.* For example, may those who are not faculty members use the appeal process?

c. *The procedural steps involved.* The initial step ought to consist of an informal airing of the dispute between the parties so that they may have maximum opportunity to resolve it themselves. Early in the appeal process, the issue(s) ought to be crystallized and the facts agreed upon. Later, the process may be more formal, ending perhaps with a formal hearing before the board of trustees or before a neutral third party. The degree of formality needs to be stated. For example, may a faculty member employ an attorney to represent him or her at any point in the appeal process? If so, may the school also have legal counsel present?

d. *Remedies.* May the board of trustees or a neutral arbitrator deal with *procedural* violation only (for example, failure to follow the school's evaluation process), or may they consider judgmental decisions as well? The latter instance has serious implications, for the actual *substance* of the decision is subject to reversal. Because boards of trustees and other third parties are usually not experienced educators, administrators often hesitate to grant them the power to review the

substance of a decision and usually seek to limit such review to procedural issues only.

e. *If there is an outside reviewer, what powers does he or she have? Or not have?* Because neutral third parties tend to wander from a literal reading of the appeal process, their powers and prerogatives should be clearly stated, lest they assume a function the school never intended. Some of these problems can be avoided by substituting advisory arbitration for binding arbitration.

While some aspects of the appeal system should be very explicit, trying to provide for every contingency that could arise through overly detailed and complex procedures may increase opportunities for challenge. As one school administrator notes, "It is better to deal with outlines of procedure rather than to try to 'cross every T' so that a sharp lawyer can't hang up a school on not having followed every specified guideline." Once again, we urge school officials to seek the assistance of legal counsel in developing a fair and workable appeal system for their institution.

8. Personnel files. Students have the Buckley Amendment. What rights has the school granted to faculty members over their personnel files? May they see them? May they challenge negative statements filed therein? May they add materials to their own file, including statements to counter negative material? These questions are likely to arise, particularly where faculty members question evaluation statements made about them or when they wish to appeal a negative personnel decision. Thus, a school's personnel policy ought to include a section on faculty rights and privileges regarding personnel files. Confidential statements from third parties should be excluded from review by the faculty member. However, ways can be devised through which facts alleged in such statements can be disclosed so that the individual has an opportunity to refute or explain them. Given increased congressional and state interest in extending the privacy rights of all employees, school heads are advised to make a concerted effort to keep their practices in this area contemporary with the developing law.

9. Retrenchment. Since many institutions are facing hard economic times, it is not unlikely that school heads could be forced to excise programs and even people. When financial exigency affects personnel decision-making, it may run counter to other institutional policies, such as continuing appointments. To preserve administrative flexibility, it is essential for faculty members to be informed that, when financial exigency exists, the school may be forced to make personnel decisions that run counter to prior understandings. For such decisions to be believed and not viewed simply as a convenient way for administrators to get rid of troublesome teachers, the retrenchment section of the policy should clearly define financial exigency and the degree to which it could affect previous personnel decisions (tenure, for example). It should also spell out the rights faculty members have to contest decisions through the appeal process, to obtain severance pay, and to expect help in seeking new employment.

The above suggestions are not the only way of doing things. Adminis-

trators should hesitate before making *any* changes in past practice, for hasty decisions are usually worse than taking no action at all. What is called for is a careful review of present personnel procedures and a good deal of deliberation before changes are made. Such deliberation ought to include consultation with faculty members, since they are the ones most affected by personnel policy and the persons whose trust and respect administrators want to earn. However, consultation does not require agreement or consensus. Ultimate responsibility rests with the school's administration.

To illustrate how the general guidelines we have advanced above might be translated into a concrete policy document, we present the following sample personnel policy. This policy, in part a composite of policies now in effect at several nonunionized independent schools, is intended to illustrate the principles discussed above. It is *not* intended to apply to any particular school and should not be adopted wholesale. We advise each school to work out its own statement of policy with assistance from faculty members, board members, legal counsel, and others. The opportunity to share in the process of creating such a policy can be of incalculable importance to school morale.

While the policy advanced here applies to teaching faculty members at the secondary level, it could easily be modified to apply to other members of the staff and to varying types of institutions. It is designed as a section to be incorporated in a general faculty handbook, which should be given to faculty members *before* they sign their contracts, because it is important for legal reasons that employees know the rules governing their employment *before* they commit themselves.

Sample Personnel Policy for Teaching Faculty Members

1. Faculty Hiring

a. *Procedures.* Initial screening of prospective faculty members is conducted at the department level by the department chairman. Candidates are introduced to members of the department and wherever possible are given an actual teaching opportunity. The chairman may wish to obtain formal or informal comments from the department staff before making a recommendation to the head of the school. Final hiring decisions are the prerogative of the head, who has over-all responsibility for school personnel.

b. *Nondiscrimination.* There is no discrimination in hiring, promoting, compensating, or retaining faculty members on the grounds of sex, age, marital status, race, or religion within the confines of the policies set forth here. In answer to specific concerns raised by the faculty, there is

(1) no distinction made between male and female faculty members;

(2) no distinction made between single and married faculty members; and

(3) no distinction made between teachers of younger and older students.

However, decisions that take into account the extent of a faculty member's participation in all aspects of the school's program and/or the supply of and demand for people in a particular discipline or specialty are not discriminatory, even though they treat people differently.

2. Faculty Compensation

a. *General allocation.* Each year, the trustees allocate to the head of the school whatever sum for faculty salary increases they feel the budget warrants. The trustees set a percentage of this total amount to be divided equally among full-time faculty members. The balance is awarded to faculty members in the form of merit increases by the head of the school.

b. *Merit increases.* While the decision of the head of the school is final, his or her decision is based for the most part on an evaluation in which the director of studies, department chairmen, and others participate. (See section 5, below, for an explanation of evaluation procedures.) Individual amounts of merit awards rest solely with the head. The range of merit awards is published each year. Merit awards are added to and become a part of the faculty member's base salary. In addition, those who earn an advanced degree while a full-time faculty member at the school will receive $500 for a master's degree, and $1,000 for a doctorate. Such an amount is paid as a one-time bonus and does not become part of the faculty member's base salary. No such payment is given for honorary degrees.

c. *Minimum salary levels.* Because the trustees recognize the desirability of maintaining minimum salary levels for faculty members who, in the opinion of the head of the school, have achieved certain levels of proficiency, they have established four levels and have developed criteria and a minimum salary for each level. The actual dollar figures for these levels and the criteria for each are announced by the head of the school at the first faculty meeting after the start of each new calendar year.

(1) Level One. Teachers who have been hired for their promise but have not yet had a chance to demonstrate their full competence.

(2) Level Two. Teachers who have had teaching experience and have demonstrated competence that gives the school sound reason to retain them.

(3) Level Three. Teachers who have demonstrated a high level of competence and are on continuing appointment.

(4) Level Four. Outstanding teachers who, through industry, creativity, and imagination, have had a profound effect on shaping the direction of a school's goals and objectives.

3. Faculty Contract Renewal and Continuing Appointment

a. *Probationary period.* The first four years of employment at the school are considered a probationary period. Contracts issued during this period are

term contracts of one year only, with no expectation stated or implied for continued employment. Department chairmen are expected to help new teachers improve their teaching skills and effectiveness during this time, as described in section 5 (evaluation), below. However, during the probationary period, a decision not to renew a contract may be based on judgment that a teacher does not have sufficient potential for future growth, even if in all other respects his or her performance has been satisfactory.[1]

b. *Continuing appointment.* Beginning with the fifth year of continuous employment at the school, a teacher may reasonably expect his or her contract to be renewed on an annual basis unless any or all of the following conditions exist (see sections 5 and 6, below).

(1) Demonstrated incompetence

(2) Lack of professional integrity or conduct

(3) Abuse of the academic process

(4) Behavior affecting professional performance in a demonstrably deleterious fashion

(5) Program changes instituted by the administration (see section 9, "Retrenchment," below)

(6) Financial exigency (see section 9, below)

(7) Detrimental influence on students or faculty

4. Faculty Workload

a. *Classroom hours.* In all curricular areas except English and social studies, the minimum teaching load regardless of the numbers of students involved is 25 classroom hours per week. In the departments of English and social studies, the minimum is 20 classroom hours per week.

b. *Extracurricular duties.* Faculty members may be assigned additional extracurricular duties by their department chairman and by the director of studies for which there is no additional compensation.

c. *Workload adjustments.* Workload adjustments caused by enrollment shifts or by conditions unique to a department are arranged by department chairmen, who function as first-line administrative supervisors. They, in turn, are responsible to the director of studies, who has over-all responsibility for all academic, athletic, and extracurricular courses and programs.[2]

[1]Some commentators, particularly lawyers, are increasingly skeptical about giving any reasons for not renewing a term appointment. Since the reasons advanced are usually hard to quantify, they are more susceptible to challenge as being unreasonable, arbitrary, or discriminatory. However, the inclusion of the phrase "with no expectation stated or implied for continued employment" in the section on term appointments may mitigate fears on this account.

[2]The functions of department chairmen and the director of studies, as well as other administrators, should be detailed elsewhere in the faculty handbook. Reference to relevant

5. Faculty Evaluation

a. *Procedure.* For purposes of faculty evaluation, the following procedure is used.

(1) Department chairmen are immediately responsible for the teachers in their disciplines or grade levels. It is their specific responsibility to observe, supervise, and discuss strengths and weaknesses with individual teachers periodically during the year. At least one interview a year is held, by the third Monday in January, during which a written evaluation of the teacher's work is shown and discussed. (Teachers are encouraged to conduct a self-assessment prior to this conference in order to increase the value of the interview session.) Both participants sign the chairman's evaluation, and the teacher is given one copy. A third copy is placed in the teacher's personnel file. (See section 8, "Personnel Files," below.)

(2) The director of studies evaluates department chairmen annually and, from time to time, faculty members as well. In each instance, a written evaluation is shown and discussed. Both participants sign the evaluation, and one copy is given to the person being evaluated. When faculty members are being evaluated, a third copy is given to the department chairman. The school's copy is kept in the faculty member's personnel file. (See section 8, below.)

(3) The signing of an evaluation shows that it has been received and discussed. By signing it, the employee is not necessarily agreeing with the evaluation. A response to the evaluation, written by the teacher, may be included in the teacher's personnel file. (See section 8, below.)

(4) While the final decision on contract renewal rests with the head of the school, he or she does not take action on renewal or nonrenewal (except as outlined in section 6, "Faculty Sanctions," below) without receiving reports during the appropriate time period from the director of studies and department chairman and, if the case concerns nonrenewal of a continuing appointment, interviewing the teacher involved.

b. *Evaluation criteria.* Those conducting evaluations use the following criteria, where applicable, for making judgmental decisions.

(1) Evidence of adequate preparation for each particular teaching assignment

(2) Demonstrated effectiveness in working with students

(3) Demonstrated effectiveness of teaching

(4) Ability to gain respect of students and other members of the faculty

(5) Effectiveness of extracurricular activities

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sections could be provided here for additional information. In general, the specificity of the section on workload depends largely on each school's own characteristics and the extent to which school officials wish to spell out workload policy in the personnel-policy statement.

(6) Evidence of professional growth

(7) Evidence of constructive contributions to the total school community

(8) Evidence of cooperative attitude in accordance with the philosophy and objectives of the school

(9) Administrative effectiveness

(10) Thorough knowledge of appropriate subject matter

c. *Corrective procedures.* Where evaluation reflects weaknesses in a faculty member, but not to a degree that, in the opinion of the head of the school, warrants termination, an honest effort is made to correct those weaknesses by notifying the faculty member and devising a corrective program. In such cases, provisional renewal may be extended to the faculty member, subject to his or her performance during the balance of the current academic year or depending on enrollment and/or course offerings for the following year. If the renewal is provisional, it is so stated. No teacher on continuing appointment is informed that his or her contract is not being renewed until he or she

(1) has been informed (with supporting reasons and evidence) that his or her performance as a teacher and/or administrator is considered unsatisfactory;

(2) has, if possible, been given an opportunity to correct any deficiency (see section 6, "Faculty Sanctions," below);

(3) has been informed that his or her job has been eliminated or modified to such an extent that he or she can no longer be employed. (See section 9, "Retrenchment," below.)

d. *Notice requirements.* Except for the provisions outlined under "Faculty Sanctions" (section 6, below), probationary faculty members can expect to receive notice of renewal or termination not later than March 15. Those on continuing appointment receive notices of renewal or nonrenewal one year in advance of the renewal date of their contract. A renewal notice gives the salary for the following year as well as the amount of merit increase (if any) that is included in the salary.

e. *Part-time contracts.* All part-time contracts are designated as such. Faculty members in this category have the same procedural rights as probationary faculty members.

f. *Meetings with the head of the school.* Every teacher has the right to discuss his or her own contract with the head of the school after reasonable notice.

6. Faculty Sanctions

a. *Procedure.* Any teacher who, as the result of an investigation initiated by the head of the school, is found to have purposely violated any of the criteria listed in section 5, "Faculty Evaluation," above, is

(1) informed in a personal interview with the head (or the head's designated representative) that such conditions exist; and

(2) given an opportunity to discuss such charges and a reasonable amount of time in which to correct the situation.

b. *Termination.* If the situation is not, or can not be, corrected, then the teacher may be released immediately if, in the opinion of the head of the school, his or her continued presence will adversely affect students or the purposes of the school as reflected in its philosophy and objectives.

7. Faculty Appeal System

a. *Preliminary steps.* All faculty members are urged to bring complaints or concerns to the attention of the appropriate chairman and/or to the designated school administrators for informal discussion and resolution. If a teacher believes that grounds for nonrenewal of a continuing appointment (but not of a probationary term appointment) or for dismissal during either a term or continuing appointment are insufficient or incorrect, he or she may request a hearing to appeal the decision within five days of being notified of the decision.

b. *Hearing procedure.* A hearing is conducted by a hearing committee, which consists of five people: three faculty members and two trustees. The faculty members are elected by the entire full-time faculty. The trustees are the chairman of the education committee and another member of that committee selected by the chairman. The hearing committee selects one of its five members as presiding officer. The committee holds a hearing within two weeks of receiving notice of a faculty member's decision to appeal. The teacher appealing may choose a representative from the faculty who is not serving on the hearing committee or from the administration. The representative may be with the teacher at all times, and the teacher may call witnesses before the committee. The committee may also call witnesses and request whatever additional information it feels is necessary. A taped or stenographic record of the hearing is kept. At the end of the hearing, the committee promptly produces written findings and a recommendation whether the teacher should be retained or terminated or whether some other action should be taken. Copies are given to the head of the school and to the teacher. If either the teacher or the head does not wish to accept the recommendation of the hearing committee, he or she may appeal its decision to the full board of trustees, who, acting as a committee of the whole, may affirm, reverse, or otherwise modify the action of the hearing committee as recorded in the committee's written or taped proceedings.

8. Personnel Files

a. *Contents.* The school maintains an official personnel file for each faculty member, which contains copies of personnel transactions, official correspondence with and pertaining to the faculty member, and formal, written evaluation reports prepared in accordance with the evaluation section of this personnel policy statement.

b. *Access.* With the exception of confidential statements from third parties on such matters as initial and future employment, graduate study, and medical records, faculty members may review and respond to materials in their personnel folders during normal business hours. In addition, faculty members may introduce material into their personnel records that supplements school evaluation reports. Faculty members are notified of any request for access to their files on other than school business unless such notification is prohibited by law.

9. Retrenchment

a. *Procedure.* The school reserves the right to shift or eliminate faculty members as the result of institutional financial exigency, reallocation of resources, reorganization and or elimination of curricular and extracurricular offerings, reorganization of academic or administrative structures or functions, or curtailment of one or more programs or functions involving such levels of the organization as the head of the school deems appropriate. Once the extent of retrenchment is identified after appropriate consultation by the head with trustees, faculty members, and others, the school administration commits itself to the following order of layoff.

(1) Part-time faculty members in the retrenchment unit

(2) Full-time faculty members, in reverse order of seniority, in the retrenchment unit.

b. *Help for those laid off.* While the school will make an effort to assist those laid off to find new employment, it makes no commitment to place those laid off in new positions. Faculty members who have been laid off will have first opportunity, for a period of two years, to apply for any new school positions created without loss of accrued seniority. Matters of possible severance pay, continuation of health insurance, and other fringe benefits will be discussed individually with those persons affected.

Appendix C
Glossary of Labor Terms and Organizations

affirmative order. An order issued by a labor-relations board requiring persons guilty of unfair labor practices to take such steps as are necessary to undo the effect of such practices.

American Federation of Teachers. Organized in 1916 to bring the public school teacher into the American labor movement, the AFT follows the pattern of trade unionism embodied in the National Labor Relations Act. The AFT believes that collective bargaining is the best way to improve the compensation and working conditions of faculty members. The AFT has a strong tie to the industrial sector through its affiliation with the AFL-CIO. Albert Shanker, now president of the AFT, is regarded by many as a leading contender for the presidency of the parent organization.

arbitration. Usually the final step in the grievance system. Through the contract, the parties agree to accept the decision of the arbitrator, who acts as a neutral third party to the dispute. Arbitration as practiced in the industrial sector is not acceptable to many educators because most arbitrators do not have special training to enable them to understand the singular nature of education. As a result, there is a growing demand for specially trained arbitrators and new arbitral procedures for education. Arbitration is also being used more frequently to settle disputes over negotiation of new contracts because strikes and other economic weaponry are deemed too costly.

authorization card. A statement signed by the employee designating the union as his or her agent for purposes of collective bargaining with the employer. Since a secret-ballot election supervised by government authorities is preferred as the most equitable way of settling a union, the employer probably does better *not* to agree to review the union's authorization cards, but rather to request a supervised election. While a labor board may find that an election is necessary because a sufficient number of employees have signed valid cards, it is better all around that the labor board, rather than the employer, make this decision.

back pay. Lost wages that must be paid to employees who have been illegally discharged or laid off.

Note. Terms defined in the text are not included here.

bumping. A practice originating in civil service whereby senior employees who are laid off have the right to replace, or "bump," less senior employees elsewhere in the work force. As applied to education, bumping (or "displacement rights") means that if the faculty member who is being laid off has the required seniority, he has the right to be employed in any other position within his area of qualifications, even if this means displacing the employee most junior in the area of qualifications. Unless the latter employee also has bumping rights, he is the one actually laid off. Bumping rights are among the more controversial topics of bargaining.

business agent. A union official who handles grievances, helps enforce agreements, and performs other administrative tasks for the union. Union business agents are usually paid employees of the union.

certification. The formal designation by a government agency that a particular union is the exclusive representative of employees for purposes of bargaining collectively with the employer.

company union. A historical term in labor relations used to describe an employee organization set up under the auspices of and often controlled by the employer. Company unions were a strategy by the employer to prevent employees from forming their own unions. They are now usually illegal. Many people in education consider faculty senates and other similar bodies to be modern company unions.

consent election. A union-representation election held after informal hearings by a labor board in which the parties to the election agree on the terms under which it will be held.

consultation session. Most contracts contain a clause requiring the employer to meet periodically with representatives of the union to discuss problems arising under the contract. Some employers charge that "consultation" is just another name for bargaining and refuse to play that political game again. However, where the dues-paying membership of the union includes most of the employees in the bargaining unit, the employer may be forced to take a more active part in consultation. In any case, school heads should not assume that consultation is a collegial experience where all the cards can be laid on the table.

contract-bar clause. Rules applied by the National Labor Relations Board in determining when an existing contract between an employer and a union will bar a representation election sought by a rival group.

escalator clause. A clause in the contract requiring that the wage salary scale be adjusted periodically to changes in the cost of living (as determined by the Consumer Price Index). Since escalator clauses can be very expensive, management should be very hesitant to consent to this bargaining demand.

grievance. An employee complaint that an employee, the union, or the employer has violated the collective-bargaining contract. A grievance system is included in virtually all contracts, often it is required by state law. A grievance system consists of steps by which an individual employee or group of employees,

usually with union backing, seek a solution to a complaint. First, the grievance is brought to the attention of the employee's immediate superior. If no satisfactory adjustment is made, the employee may continue to appeal to higher levels. If agreement cannot be reached, most grievance procedures culminate in binding arbitration by a neutral third party. It is always hoped that disputes can be settled informally, but if first-line supervisors (department chairmen, directors of studies) are ineffectual *or* if there is great conflict between the employees and the administration, informal settlement is wishful thinking. Grievance processing thus becomes very expensive in time and money.

immunity clause. A clause in a collective-bargaining contract designed to protect the union from suits for contract violation that grow out of unauthorized strikes. Obviously, school administrators should hesitate to agree to such a clause.

initiation fee. A fee required by unions as a condition of belonging to the union. If an initiation fee is ruled to be excessive or discriminatory by a labor board or court, the employer may not be held to the obligation, under a union-shop agreement, of discharging employees who do not join the union.

job action. Concerted action by employees against the employer, usually at the point of impasse in contract talks. If the current contract contains a "no strike" clause, job action can take the form of picketing, slow down, or other similar protest.

jurisdictional dispute. Disagreements among unions as to who should represent a group of workers, or disagreements about the right of employees to perform certain types of work, such as plumbers doing the work of electrical workers, or librarians doing the work of counselors.

master contract. A single collective-bargaining agreement that sets forth salary, hours, and other working conditions for all employees in the bargaining unit. A master contract may allow individual agreements with the employer on certain matters. Master contracts are quite prevalent among symphony orchestras, for they allow first-chair players to negotiate individual agreements commensurate with their talent and reputation.

mediation. The involvement of a neutral third party to facilitate agreement on contract-term disputes or grievance disputes. Unlike arbitrators, mediators cannot make binding settlements.

National Education Association. The oldest of the national teacher organizations, dating back to 1857. Through most of its history, the NEA has served teachers and even administrators as a professional association and has become a prominent political force at the local, state, and federal levels. During the 1960's, the NEA began to compete with the American Federation of Teachers as a bargaining agent for teachers, although it was slow to substitute collective bargaining for "professional negotiation." Today, the NEA is the largest national teacher union and does not differ much from the AFT, except for its lack of ties to organized labor—which, in fact, is the major stumbling block to merger of the two organizations.

organizational picketing. Picketing of an employer in an attempt to induce employees to join the union.

picketing. Public demonstrations of the existence of a labor dispute with the employer. Most picketing consists of having union members carry signs urging nonunion members and the general public to boycott the employer's business.

professional employee. Under the National Labor Relations Act, employees who are considered "professionals" under set criteria may not be included with nonprofessional employees in a bargaining unit unless they so elect.

reinstatement. Return to employment of persons unlawfully discharged. Reinstatement and the award of back pay lost during the period of discharge are often lumped together in an attempt to "make the employee whole," that is, to compensate him or her completely.

representation election. The election held under the auspices of a labor board to determine whether employees in a bargaining unit wish to unionize, and, if so, with which of the contending bargaining agents.

restraint and coercion. The National Labor Relations Act contains a provision that makes it an unfair labor practice for a union to restrain or coerce employees in the exercise of their right to join unions or to engage in union activities, or in the exercise of their right to refrain from doing so.

right to work. The term used to apply to laws that ban union-security agreements, such as the union shop, by rendering it illegal to make employment conditional on membership or nonmembership in a labor organization. Unions are particularly opposed to these state laws because they allow "free riders" — those who share in the collective benefit but pay nothing for it.

run-off election. A second election directed by a labor board when no one on the first ballot (including the category "no agent") receives more than half the votes recorded.

seniority. Length of service with an employer or in one branch of his business. Unions usually demand that personnel decisions be made on this basis, for example, "last in, first out," when layoffs occur.

showing of interest. Under the National Labor Relations Act and most state legislation, a union's petition for a bargaining election is not accepted until the union can show enough support to warrant such an election. Before the National Labor Relations Board will process an election petition, 30 per cent of the employees in the bargaining unit must show support for the union.

sick leave. The number of paid days an employee may claim for illness. In some cases, sick leave is cumulative from year to year.

supervisor. Those in first-level administrative positions are generally deemed supervisors. They have the authority to hire and fire or make recommendations to this effect. They have no bargaining rights under the federal act. One critical area in academic unionization is the role of department chairmen. The National

Labor Relations Board has developed guidelines for deciding whether they are first-level administrators or whether they are faculty members who should be in the bargaining unit.

union steward. A union representative for a group of fellow employees. He or she is usually elected by the employees to help them with grievances and convey information to union officials or administrators. The union or "shop" steward continues to work for the employer, while handling union duties.

wage reopener. A clause in the contract allowing reopening of negotiations on wages after a certain time, or dependent on certain conditions, even though the contract itself has not terminated.

yellow-dog contract. A contract whereby the employee agrees not to join a union or to participate in bringing about a union. Such a contract is illegal under the National Labor Relations Act.

zipper clause. A clause in a contract limiting the agreement to what is specifically stated. Management frequently seeks such a clause in order to have an explicit statement that all policies and rules *not* included in the contract shall continue in force.

Appendix D
Annotated Bibliography

This bibliography is not an exhaustive list of first-rate materials on unions and collective bargaining. Rather, it is intended to give a descriptive sampling of some of the readings that are available. Given the paucity of labor-relations writing on nonpublic schools, most of the sources here have to do with other sectors of education or those outside of education, but have been included for their relevance to the independent school setting.

Books and Monographs

Begin, James P., Theodore Settle, and Paula Alexander. *Academics on Strike*. New Brunswick, N.J.: Institute of Management and Labor Relations, Rutgers University, 1975. This inexpensive paperback offers an interesting, detailed, case-study examination of two faculty strikes in higher education: one at Rider College, and one in the New Jersey State College system. The strike at Rider, the first strike in the country at a private college, is of particular interest. The Rider faculty had unionized with the American Association of University Professors, the least militant of the three major unions in higher education. Because Rider is a private institution, the strike took place under the aegis of the federal bargaining law, the National Labor Relations Act. A breakdown in bargaining talks triggered the job action. Available from Library, Institute of Management and Labor Relations, Ryders Lane, New Brunswick, N.J. 08930.

Bok, Derek, and John T. Dunlop. *Labor and the American Community*. New York: Simon and Schuster, 1970. The authors provide an excellent review of labor development and practices in American society, with emphasis on the industrial sector. This book makes good background reading for both layman and expert. Available in paperback from Simon and Schuster, 630 Fifth Ave., New York, N.Y. 10020.

Carlton, Patrick W., and Harold I. Goodwin. *The Collective Dilemma: Negotiations in Education*. Worthington, Ohio: Charles A. Jones Publishing Co., 1969. This book gives good basic information on collective bargaining and associated problems in public schools. Order from the publisher, Village Green, Worthington, Ohio 43085.

Faculty Collective Bargaining: A Chronicle of Higher Education Handbook. Washington, D.C.: *The Chronicle of Higher Education*, 1976. This new handbook is designed to provide basic information for the generalist in higher education. It contains a detailed outline of contract provisions, suggestions by experienced union and

management negotiators for strategy at the bargaining table, a rundown of pertinent National Labor Relations Board decisions (with citations), and a very complete bibliography. The handbook should prove useful to anyone in nonpublic elementary and secondary education. It can be purchased for under $5 a copy (or in lots at special bulk rates) from *The Chronicle of Higher Education*, 1717 Massachusetts Ave., N.W., Washington, D.C. 20036.

Kemerer, Frank R., and J. Victor Baldridge. *Unions on Campus: A National Study of the Consequences of Faculty Bargaining*. San Francisco: Jossey-Bass, 1975. This book focuses on both the causes and consequences of academic bargaining. Data are drawn from survey and case-study research at diverse public and private institutions. While the book is oriented to higher education, many of its chapters have significance for the nonpublic school as well, particularly those that examine the causes of bargaining, factors that shape bargaining at a particular institution, and consequences for institutional administration. Available from Jossey-Bass, Inc., 615 Montgomery St., San Francisco, Calif. 94111.

Negotiations in Catholic Schools. Washington, D.C.: National Catholic Educational Association, 1974. This 50-page monograph has five chapters: "Why Teacher Unions in Catholic Schools?" "How Catholic Teacher Unions Began," "Collective Bargaining as a Process," "The Teacher Contract," and "Effects of Teacher Unions on Catholic School Personnel." Also included is an extensive bibliography. The monograph may be purchased at nominal cost from Publications Sales, NCEA, One Dupont Circle, Suite 350, Washington, D.C. 20036.

Vladeck, J. P., and S. C. Vladeck, eds. *Collective Bargaining in Higher Education: The Developing Law*. New York: Practising Law Institute, 1975. This fine, though expensive, contemporary collection of essays by lawyers, researchers, and practitioners is oriented in part to higher education, but many chapters and the entire section entitled "The Legal Framework" are pertinent to the nonpublic secondary school. Several chapters detail the history and philosophy of competing teacher organizations such as the American Federation of Teachers and the National Education Association. Well worth the expense. Order from Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019.

Wollett, Donald H., and Robert H. Chanin. *The Law and Practice of Teacher Negotiations*. Washington, D.C.: Bureau of National Affairs, 1970. This comprehensive 1,000-page "how to do it" looseleaf publication was produced by two experienced lawyers. Its text, legal references, sample forms, and checklists should be of great interest and value to school administrators, trustees, and lawyers engaged in the bargaining process even though it is oriented to public schools. Order from Bureau of National Affairs, 1231 25th St., N.W., Washington, D.C. 20037.

Periodicals, Services, and Sources

Academic Collective Bargaining Information Service, 1818 R St., N.W., Washington, D.C. 20009. This service, sponsored by the Association of American Colleges, the American Association of State Colleges and Universities, and the National Association of State Universities and Land Grant Colleges, releases periodic nontechnical reports on all aspects of academic unionization, negotiation, and contract administration. Financed in part by the Carnegie Corporation of New York, it is the only complete service available. Of particular interest are

two case-study reports issued in 1974 that analyze union defeats: Virginia Lussier, "Albion College Votes 'No Agent': A Case Study," and Gerald A. Bodner, "The 'No Agent' Vote at New York University: A Concise Legal History."

Bureau of National Affairs, 1231 25th St., N.W., Washington, D.C. 20037. This labor-relations reporting service offers numerous publications related to collective bargaining, mostly directed to experts in the field. However, school administrators who wish to play a large part in the negotiating process will eventually want to investigate the various publications of this service. Commerce Clearing House, 4025 W. Peterson Ave., Chicago, Ill. 60646, is a similar service, also directed to the expert.

The Chronicle of Higher Education, 1717 Massachusetts Ave., N.W., Washington, D.C. 20036. The *Chronicle* is the primary newspaper of higher education, appearing weekly during most of the year and biweekly between semesters and over the summer. It is one of the least expensive, most comprehensive, and most efficient ways to stay abreast of collective-bargaining events, court cases, and myriad other happenings in higher education that are pertinent to other sectors of education as well.

The Independent School Teacher, Box 142, Belmont, Mass. 02178. This newspaper, intended primarily for teachers, began publication in the fall of 1975. It is published monthly, except June, July, and August. Its tone is mildly egalitarian, although it is not (at least at this writing) pro-union. In fact, it opposed unionization as a solution to teacher problems in an editorial in its December 1975–January 1976 issue. For administrators who want to know what teachers in independent schools are reading and thinking about, this publication is on the "must read" list.

Journal of the College and University Personnel Association, One Dupont Circle, Suite 650, Washington, D.C. 20036. This quarterly journal, while directed to higher education, contains many articles of interest to administrators concerned with personnel administration at all levels of education.

Journal of Law and Education, Jefferson Book Company, P.O. Box 1936, Cincinnati, Ohio 45201. This quarterly journal covers many law-related educational topics, including collective bargaining. Every issue carries a department entitled "Case Summaries of Recent Educational Decisions," which includes labor relations. It is subdivided into sections on primary schools, secondary schools, and colleges and universities. The journal is an excellent resource for the layman who is interested in educationally related legal issues such as civil liberties for students, teacher rights, responsibilities and legal liabilities of board members, collective bargaining, and so on.

National Labor Relations Board, 1717 Pennsylvania Ave., N.W., Room 710, Washington, D.C. 20036. School heads may wish to direct special questions and inquiries related to practice under federal labor law to the NLRB.

Articles and Essays

Anderson, Lester W. "The Management Team and Negotiations." *National Association of Secondary School Principals Bulletin*, October 1969. This discussion of the team approach for management in conducting negotiations emphasizes maintaining open channels of communication.

Bakalis, Michael. "Collective Negotiations in the Absence of Legislation." *Compact*. June 1972. This article by a former Illinois superintendent of public instruction discusses the difficulties inherent in bargaining outside a legal framework. It is of interest to school heads who decide to recognize a union even though there is no supportive collective-bargaining law.

Finkin, Matthew W. "The NLRB in Higher Education." *University of Toledo Law Review*. Spring 1974. This thorough and readable review of the practices of the National Labor Relations Board to date applies to both the nonpublic secondary sector and nonpublic higher education. It is required reading for anyone interested in the practices and resulting criticisms of the NLRB in education.

James, Tom. "The States Struggle To Define Scope of Teacher Bargaining." *Phi Delta Kappan*. October 1975. As one of three articles related to collective-bargaining legislation, this article gives a good review of different approaches taken by various states that permit public-sector collective bargaining. The companion articles—Robert H. Chanin, "The Case for a Collective Bargaining Statute for Public Employees," and Myron Lieberman, "Neglected Issues in Federal Public Employee Bargaining Legislation"—debate the advisability of extending the National Labor Relations Act to all public employees.

Journal of College and University Law. Summer 1974. The entire issue is devoted to discussing practical questions about unionization and collective bargaining in education. Articles deal with administrators' developing pre-election campaign strategy, educating the National Labor Relations Board, unfair labor practices in an academic setting, and other topics. It is available from Academic Collective Bargaining Service, 1818 R St., N.W., Washington, D.C. 20009.

Kay, William F. "The Need for Limitation upon the Scope of Negotiations in Public Education, II." *Journal of Law and Education*. January 1973. The author explores various state laws and court cases affecting the scope of bargaining for teachers in an interesting, sophisticated discussion of the concept of the scope of bargaining. The preceding essay on this topic is listed immediately below.

Metzler, John H. "The Need for Limitation upon the Scope of Negotiations in Public Education, I." *Journal of Law and Education*. January 1973. The author suggests that the lack of specific and legally set terms for negotiations has allowed teacher bargaining to encompass unreasonable demands. While his article pertains to the public sector, it also has relevance for independent schools, since the National Labor Relations Board has yet to decide what mandatory issues of bargaining are unique to the educational setting.

Nicholson, Everett W., and Roy R. Nasstrom. "The Impact of Collective Negotiations on Principals." *National Association of Secondary School Principals Bulletin*. October 1974. This article reports on numerous studies on the role of the principal in the bargaining process.